DOCUMENT RESUME

ED 462 225 RC 023 370

TITLE	Strengthening the Circle: Child Support for Native American Children.
INSTITUTION	Office of Child Support Enforcement (DHHS), Washington, DC.
PUB DATE	1999-00-00
NOTE	68p.
AVAILABLE FROM	For full text: http://www.acf.dhhs.gov/programs/cse/rpt/stcircle.pdf.
PUB TYPE	Reports - Descriptive (141)
EDRS PRICE	MF01/PC03 Plus Postage.
DESCRIPTORS	American Indians; Child Rearing; *Child Support; Child Welfare; Family Environment; Federal Indian Relationship; Federal Programs; Public Agencies; *Tribal Government; Tribal Sovereignty; *Tribes; *Welfare Reform
IDENTIFIERS	*Child Support Enforcement Program; *Native Americans; Personal Responsibility and Work Opp Recon Act; State Tribal Relationship

ABSTRACT

Technical amendments to the 1996 welfare reform legislation--the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA)--include new requirements for administering a state child support enforcement program. This document provides background information to American Indian tribes, Alaska Native villages, tribal courts, and inter-tribal organizations that may apply for direct funds to provide child support enforcement services in Indian Country. The first section describes the federal Office of Child Support Enforcement (OCSE) Native American Program, the OCSE Native American Work Group and Nation to Nation Consultation Plan, the process of direct funding to tribes, and state-tribal cooperative agreements regarding child support enforcement programs. The second section discusses federal self-determination policy toward Indian tribes and Alaska Native villages, the national Native American consultation policy, OCSE services, new enforcement techniques in effect through PRWORA, new requirements for state programs under PRWORA, current tribal participation in child support enforcement, and related federal tribal initiatives. The third section examines tribal traditions of supporting children, various child-rearing practices in the extended family, attitudes of respect toward the child's autonomy, means of resolving family conflict, and aspects of tribal government and tribal jurisdiction. Programs of the Eastern Band of Cherokee, Chickasaw Nation, Narragansett Tribe, Navajo Nation, and Confederated Tribes of the Colville Reservation are described. An appendix summarizes the legislative history of child support enforcement. (SV)

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STRENGTHENING THE CIRCLE:

CHILD SUPPORT FOR NATIVE AMERICAN CHILDREN

U.S. Department of Health and Human Services
Administration for Children and Families
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2

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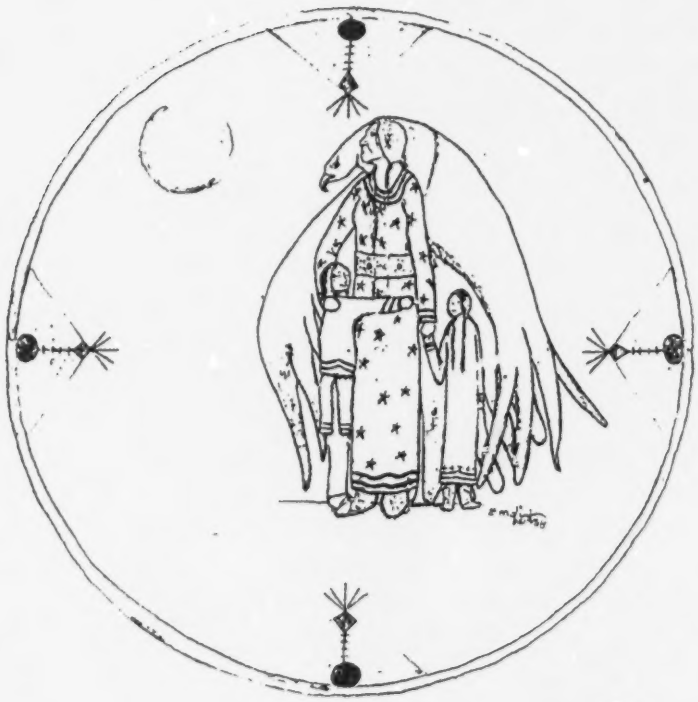

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CHILD SUPPORT AND NATIVE AMERICAN CHILDREN

"The traditional view of family is universal in scope. 'Family' extends well beyond immediate relatives to members of the clan...members of the community or Tribe...all living creatures in this world, the natural environment, and the universe itself. The entire universe is thought of as family with each and every one of its members having... (a) place in the Circle."
J.T. Garrett, Ph.D, Elder,
Eastern Band of Cherokee

This resource document is dedicated to Native American children. We honor the holistic philosophy that embraces Native children, their parents, their extended families, their communities and Tribes or Bands within a protective and empowering Circle of Life. Through generations of changes and challenges threatening the existence of the Native American way of life, American Indian and Alaska Native families continue to survive.

In describing new child support enforcement provisions for Native American children and new opportunities for intergovernmental partnerships to meet their needs, we recognize the critical role of the Tribes and Tribal organizations that help to meet family needs that strengthen the Circle of protection around Native American children. We also acknowledge the important role of Federal, State, and local child support enforcement professionals, in strengthening the Circle of protection for Native American children.

THE 1996 PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT TECHNICAL AMENDMENTS

This publication is a technical assistance reference and resource document. It is for Native American parents, American Indian Tribes and Alaska Native governments; Tribal and inter-Tribal organizations; and Federal, State, and local child support enforcement and other caring professionals. Its purpose is to summarize new information needed across Indian Country to assess and formulate how to carry out the technical amendments to the 1996 Personal Responsibility and Work Opportunity Reconciliation Act, referred to as PRWORA.

There are 340 American Indian Tribes, over 238 Alaska Native Village governments and organizations, and 245 Tribal courts potentially eligible to apply for direct funds to provide child support enforcement services in Indian Country. Native American consortia and Inter-Tribal organizations may also be eligible. The Tribes and organizations are also potentially eligible to enter into inter-governmental cooperative agreements with States.

Although each Tribe has its distinct legal structures and unique customs, belief in the special value and importance of children is virtually universal. The diversity of jurisdictional agreements, Tribal organizations, and local customs underscores the need for a basic understanding among those who will build new child support enforcement partnerships to protect Native American children.

This reference document is not intended to serve as a guide to design and operate a Tribal child support enforcement program, nor for entering into specific intergovernmental agreements. Rather, its goal is to provide a context within which all parties dedicated to serve Indian children can discuss and deliberate the new child support enforcement authorities in the technical amendments to the Welfare Reform Act (PRWORA) and how to carry them out. This will strengthen the Circle of protection around Native American children. Information requests and questions should be sent to the Office of Child Support Enforcement Native American Program, 370 L'Enfant Promenade SW, Aerospace Building Fourth Floor East, Washington DC 20447.

STRENGTHENING THE CIRCLE: CHILD SUPPORT FOR NATIVE AMERICAN CHILDREN

I. STRENGTHENING THE CIRCLE:

1 **The Future for Native American Children**
- 1 The OCSE Native American Program
- 3 The OCSE Native American Work Group
- 3 The OCSE Nation to Nation Consultation Plan
- 4 Direct Funding to Tribes
- 8 Tribal and State Cooperative Agreements
- 10 The Eastern Band of Cherokee Indians in North Carolina

12 **An Era of New Partnerships**

II. STRENGTHENING THE CIRCLE:

15 **Federal Policies and Tribal Consultation**
- 15 Federal Self-Determination Policy
- 16 The Federal Trust Responsibility
- 16 The Government to Government Relationship
- 17 Title VI of the Civil Rights Act
- 18 Affirming Tribal Sovereignty
- 19 National Native American Consultation Policy
- 19 HHS Consultation Policy
- 21 A New Executive Order on Consultation and Coordination

23 **The Child Support Enforcement Program**
- 23 Federal and State Child Support Enforcement
- 26 CSE in the Administration for Children and Families
- 27 The Creation of the Child Support Enforcement Program
- 27 The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) Public Law 104-193
- 31 Tribal Participation in Child Support Enforcement
- 33 Federal Tribal Initiatives
- 33 The Chickasaw Nation Child Support Enforcement Services

III. STRENGTHENING THE CIRCLE:

37 **Tribal Traditions of Supporting Children**

38 Native American Families

40 Reuniting Fathers

40 Family Balance

41 Organic Law--The Narragansett Tribe of Rhode Island

42 The Navajo Nation CSE Program

44 **American Indian and Alaska Tribal Governance**

44 Tribal Sovereignty

44 Tribal Governing Bodies

44 Jurisdiction on Indian Lands

45 The Confederated Tribes of the Colville Reservation

49 Tribal Laws, Courts, Codes

50 Land Status

50 Tribal Membership

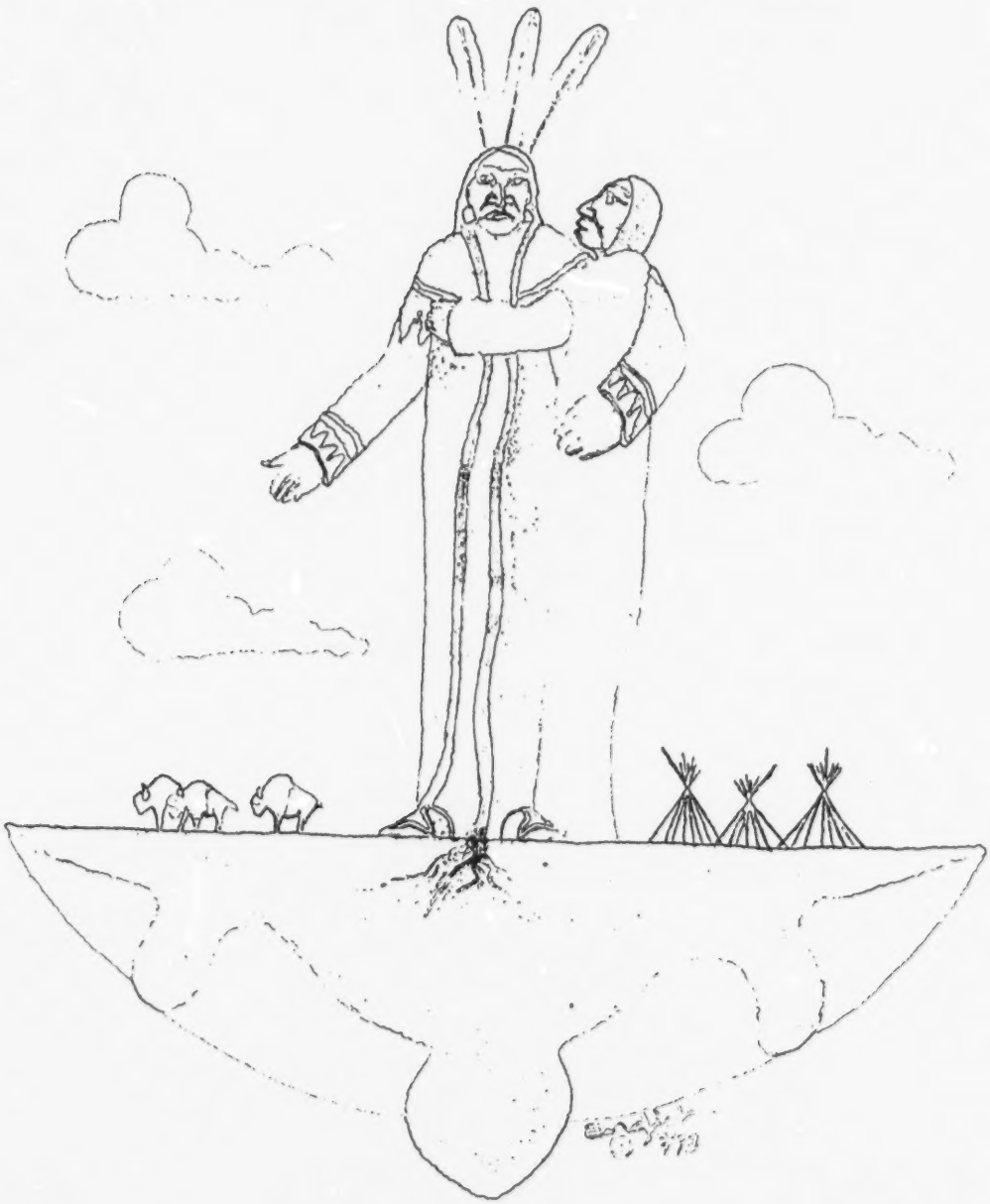
50 The Service Population

51 Labor Force Data

APPENDIX

52 A Summary of the Legislative History of Child Support Enforcement

1. STRENGTHENING THE CIRCLE:



"The government-to-government relationship between the Tribes and the United States embodies the fundamental belief that people of widely varied and diverse cultural backgrounds can join together to build a great country. Such greatness can be sustained, however, only so long as we honor the ideals and principles upon which America is founded and abide by our commitments to all our people."
-- William Jefferson Clinton, President of the United States of America.

"To properly develop this new legislative mandate, it is essential that we in the Federal Office of Child Support Enforcement seek Native American consultation and input during program structuring and before establishing regulations." --David Gray Ross, Commissioner, Federal Office of Child Support Enforcement

The Future for Native American Children

The OCSE Native American Program

The Office of Child Support Enforcement has established a national Native American Program (NAP.) The mission of the Native American Program, in the Federal Office of Child Support Enforcement (OCSE), is to provide a new and dynamic context within which the historic provisions of the PRWORA technical amendments can be implemented across Indian Country.

A major goal of OCSE is to establish the program policy to carry out the new authorities through consultation with Tribes and Native American institutions. This is to ensure that Native American children receive child support services. It includes implementing the PRWORA provisions to provide direct funding to Tribes and Tribal organizations, and to establish cooperative agreements with the States. We invite American Indian Tribes, Alaska Native Governments, Tribal organizations and individuals to comment on and provide recommendations for Native American child support enforcement policy and operations.

With consultation as a major basis, the Native American Program is designed to provide policy direction, required information, and technical assistance to Tribes

and Tribal organizations to help them implement child support enforcement programs directly or through cooperative agreements with States, in Indian Country. OCSE NAP will provide leadership so eligible Tribes and Native American organizations will be able to qualify to apply to receive direct funding to operate their own child support enforcement programs and services.

Consultation is an ongoing process--the door will never be closed in the Office of Child Support Enforcement to consultation and coordination to ensure that Native American children can receive the services they need and deserve.

The general goals of the OCSE Native American Program are:

- To work to ensure that Native American children receive the child support to which they are entitled
- To design a Native American Program that meets all the requirements of Title IV-D and the 1996 PRWORA technical amendments in the Balanced Budget Act of 1997 for direct funding to Tribes, and entering into intergovernmental agreements between Tribes and States
- To recognize the unique sovereignty of each Tribe and respect its culture and traditions for supporting Native American children
- To involve Tribes and Native American organizations at all levels of decision-making, to provide opportunities for them to be full partners in developing child support enforcement (CSE) policies and partnership goals and outcomes
- To develop those common Federal/Tribal/State CSE goals for working together in new organizational relationships that will benefit Native American children in Indian Country and in the States
- To provide and share the child support enforcement information needed to develop the necessary Tribal, State, and Federal working relationships

- To support and assist Tribes and Tribal organizations in using the existing OCSE infrastructure: the Federal and State Parent Locator Service registries, the new Federal Directory of New Hires, State centralized units for collections and disbursement of support payments, the expanded enforcement authorities, simplified reviews, and streamlined paternity establishment procedures and voluntary acknowledgment

The OCSE Native American Work Group

The first step toward establishing as broad a consultative base as possible, was to form a Native American Work Group in the Federal Office of Child Support Enforcement. Work group members provided initial recommendations on how to begin the consultation process and shared Tribal child support enforcement activities in their areas, including present Tribal/State cooperative agreements, and the cultural considerations necessary and relevant to the task at hand.

The OCSE Native American Work Group is made up of OCSE central office representatives; CSE staff from Regions V, VI, VIII, IX and X; State IV-D Directors or staff from Arizona, Alaska, Wyoming, North Dakota, and North Carolina. There are 17 Native Americans on the Work Group representing Tribes, Native American groups and organizations.

The Tribal members on the Work Group work in child support enforcement as judges, attorneys, health workers and social service providers. They also provide foundational knowledge about the larger spectrum of the Tribal traditions and Native cultures that relate to child support for Native American children.

The OCSE Nation to Nation Consultation Plan

OCSE submitted consultation objectives to the Department of Health and Human Services in a required Plan:

- To consult with Native American Nations and institutions on all child support enforcement policies, decisions, requirements and programs, that affect them in order to develop and achieve joint child support enforcement objectives
- To communicate regularly with Native American Nations and institutions about child support enforcement policies, decisions, requirements, and programs in a culturally effective manner, clearly and concisely, in order to ensure substantive consultation occurs
- To coordinate the development of OCSE policies, programs, and consultation plans that impact on Native Americans with the Administration for Children and Families (ACF) and its agencies: The Administration for Children, Youth and Families (ACYF child care, Head Start, etc.), the Office of Family Assistance (Temporary Assistance for

Needy Families [TANF],) The Administration for Native Americans (ANA social and economic development), and with the Department to the extent possible, in order to address related program areas comprehensively. This will be done to reduce multiple consultation burdens on the Tribal Nations and organizations.

The new protections that will benefit all Native American children that need child support challenge all of us to work with due diligence. Different perceptions of past experiences can affect how the Federal, State and Tribal governments relate today. It is hoped that respectful communication and new understandings will place, once and for all, American Indian Tribes and Alaska Native Village governments as enduring parts of our great Nation. The OCSE Native American Program pledges to remain programmatically dynamic and open to suggestions about how best to implement the law to achieve mutual CSE goals to benefit Native American children.

Direct Funding to Tribes

Two new provisions that apply to Tribes and Tribal organizations specifically, are the technical amendments to the 1996 Welfare Reform Act (PRWORA, also known as Public Law 104-193) in the Balanced Budget Act of 1997, Public Law 105-33. The technical amendments authorize Tribes to operate their own programs, and to take a more active role in child support enforcement in Indian Country. These provisions have great potential for Tribes and Tribal organizations meeting Native American children child support needs through a range of service options that will meet CSE requirements, maintain Tribal customs, and a Tribe's values and culture.

The most significant provision to Tribes and Native Americans in the technical amendments is:

> ***42 U.S.C. 655(f) "The Secretary may make direct payments under this part to an Indian Tribe or Tribal organization that demonstrates, to the satisfaction of the Secretary, that it has the capacity to operate a child support enforcement program meeting the objectives of this part, including the establishment of paternity, establishment, modification, and enforcement of support orders, and location of absent parents. The Secretary shall promulgate regulations establishing the requirements that must be met by a an Indian Tribe or Tribal organization to be eligible for a grant under this subsection."***
>
> The definitions of "Indian Tribe" and "Tribal organization" in Public Law 93-638, the Indian Self-Determination and Education Assistance Act of 1975, as amended in 1988, Section 4, subsections (e) and (f) define:
>
> "Indian Tribe" as any Indian Tribe, band, nation or other organized group or community, including Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat.688), which is recognized as eligible for the special programs and services provided by the United States because of their status as Indians; and;
>
> "Tribal organization" as the recognized governing body of any Indian Tribe; any legally established organization of Indian which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: PROVIDED, That in any case where a contract is let or a grant made to an organization to perform services benefiting more than one Tribe, the approval of each such Indian Tribe shall be the prerequisite to the letting or making of such contract or grant.

Tribes are specifically mentioned in the law for the first time, and a direct funding mechanism is authorized for them to operate their own child support enforcement programs under regulations that establish the requirements to be met such as child support enforcement plans.

The Departmental process for direct funding is the awarding of grants. This generally begins with the establishment of policies, procedures, and an analysis of child support enforcement program requirements that will apply to the grant program. The basic CSE program parameters have been established since 1975. A review of these, within the context of a child support program to be operated by Tribal governments, rather than State governments, is part of the process of establishing the Tribal grant program. The two PRWORA provisions cite specific parameters within which grants for this program can be awarded. The provision for direct funding to Tribes and Tribal organizations calls for regulations to be promulgated to specify the requirements that Tribes and Tribal organizations must meet to be able to qualify for a grant.

The regulatory process begins with consultation with the Tribes and Native American institutions. Six consultations sessions for Tribes and Native American organization

participants were held across the country in Albuquerque NM, Portland OR, Nashville TN, Fairbanks AK, Washington DC and Prior Lake MN. Comments and recommendations received in these consultations are taken into account in the development of the regulations for direct funding to Tribes and in establishing guidance for cooperative agreements.

After policies, program goals, and requirements for direct funding to Tribes and Native American organizations have been determined in OCSE, a Notice of Proposed Rulemaking (NPRM) is published in the *Federal Register*. The NPRM process allows for comments and recommendations with regard to the proposed policies, program goals, definitions, requirements and explanations of terms in the provision--such as "an Indian Tribe or Tribal organization that demonstrates to the satisfaction of the Secretary that it has the capacity to operate a child support enforcement program..." and how to "operate a child support program meeting the objectives of this part" is proposed, and what will constitute a Tribal child support enforcement plan.

Proposed regulations can also refer to other OCSE guidance or requirements that apply to Tribal child support enforcement programs. Comments and recommendations received during the comment period are taken into account in the development of final regulations for the program. The comments and recommendations, and actions taken by OCSE with regard to them, are included in the final rules.

Once final regulations are promulgated, a Program Announcement is published in the *Federal Register* to announce the availability of grant funds. The Program Announcement on OCSE grants to Tribes and Tribal organizations provides closing dates, contact persons, and the background about the grant program; the Program Purpose and Objectives, availability of funds information, eligible applicant criteria, project priorities, and other considerations that apply to the Program Announcement; budget periods, how applications are screened, the review process, evaluation criteria, and how to develop the application, and what to include, and deadlines.

To assist Tribal, Federal, State and local readers to understand the PRWORA requirements within an overall national and a local Tribal context, this publication includes a summary of the history of the child support enforcement State program provisions. Current Native American child support working models and programs are included to illustrate both Tribal capacity in operating child support enforcement services and the range of programmatic options being employed.

It is important for Tribes and Native American organizations to have the background and history of the child support enforcement program to be able to fully participate in the consultation process and subsequent decisions about Native American child support enforcement program policy. It will also help address the context required within which to implement the new CSE statutory provisions in the rulemaking process. Tribal roles, questions, and options about the child support Native American arena must be articulated and shared.

Operational parameters must be defined for the new Tribal initiatives. A variety of priorities need to be delineated, agreed upon, and organized for the national, Tribal, and State levels, each with their respective missions. New types of child support enforcement partnerships are possible under the provisions.

Regulation issuance requires interactive steps and decisions that meet the requirements of the law, and also assure programmatic outcomes. The most crucial step is to provide Tribes and Tribal organizations with the information they need about current program requirements in the law, how they relate to the new Tribal provisions, and the policy and programmatic options available.

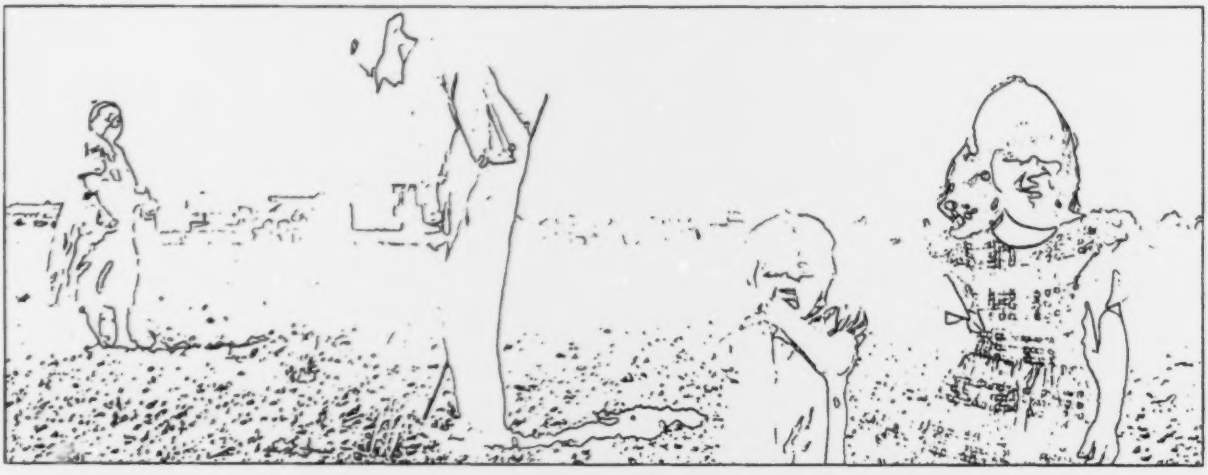
What is regulated is based upon analyses of statutory and OCSE programmatic requirements, the operational goals of the provisions, and how the terms in the statute are defined, as well as considerations based on Native American comments and recommendations.

Consultation affords Tribes and Native American organizations the opportunity to articulate Tribal perspectives that are important in meeting child support enforcement goals in Indian Country. Considered comprehensively, and articulated well, such a body of interactively-developed information provides one basis for developing Federal policy and regulations. Tribes, as sovereign governmental entities without tax bases and large commercial infrastructures, may need different program and funding criteria, as well as flexible operational options to meet statutory CSE requirements. States have this flexibility.

The descriptions of Tribal child support enforcement participation in this publication are current Tribal accomplishments illustrating that flexibility results in outcomes for Native American children.

The information provided in this publication is not intended to be exhaustive. It is a basis for deliberation by the Native American Nations and Tribal organizations of those questions, goals, needs, and issues important for them to explore and comment upon to successfully operate Tribal CSE programs in Indian Country.

There are a number of intergovernmental agreements described in this document, in effect under the current State IV-D program between American Indian Nations and States. The intent of describing them in this publication is to illustrate the variety and flexibility possible through intergovernmental agreements, both formal and informal ones. They show the potential for providing child support enforcement protections to Native children more comprehensively across Indian Country, and also illustrate the range of successful agreement service options possible. Examples of operational jurisdictional cooperation are also included. Tribal laws and customs present unique challenges and opportunities to enforce child support cooperatively with the States.



These examples illustrate Tribal capacity to provide child support enforcement services every day, without compromising Tribal beliefs and cultures. They also describe the positive outcomes that cooperative options between Tribes and States achieve. Through them, enforcement orders covering Indian children are increasing and being enforced, and Indian children's needs are being met.

However, absent specific authorization prior to PRWORA, there had not been a national impetus to address the policy and information gaps existing across Indian Country to comprehensively address serving all Native American children that needed child support. With the goal of addressing the outcomes for Indian children nationally, with the flexibility needed, the National Office of Child Support Enforcement Native American Program will facilitate Federal central and regional office, Tribal, and State governmental levels working together to provide services to Native American children and their families.

To facilitate future Tribal/State cooperative agreements, basic policies needed to implement the provision below will be addressed comprehensively, and include Tribal standpoints that need

to be taken into consideration. This is to provide an opportunity for all governmental levels--Federal, Tribal and State--to articulate goals and plans to cooperatively locate parents, increase paternity establishment, increase establishment of child support orders and to enforce them. This provision is an opportunity to implement CSE programs in new ways:

42 U.S.C. 654(33) provides that "a State that receives funding pursuant to section 428 and that has within it borders Indian country (as defined in section 1151 of title 18, United States Code) may enter into cooperative agreements with an Indian Tribe, Tribal organization, or Alaska Native village, group, regional or village corporation (as defined in subsections (e) and (l) if section 4 of the Indian Self-Determination and Education Assistance Act,) if the Indian Tribe or Tribal organization has an established Tribal court system or a Court of Indian Offenses with the authority to establish paternity, establish, modify, or enforce support orders, or to enter support orders in accordance with child support guidelines established or adopted by such Tribe or organization, under which the State and Tribe or organization shall provide for the cooperative delivery of child support enforcement services in Indian country and for the forwarding of all collections pursuant to the functions performed by the Tribe or organization to the State agency, or conversely, by the State agency to the Tribe or organization, which shall distribute such collections in accordance with such agreement. This provision does not void any provision of any cooperative agreements entered into before the enactment of Welfare Reform and it does not deprive any State of jurisdiction over Indian country (as so defined) that is lawfully exercised under section 402 of the Act entitled, An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes, approved April 11, 1968 (25 U.S.C. 1322)."

Definitions Section 428 (e) "For the purposes of the subsection, the term United States means the 50 States and the District of Columbia."

Subsections (e) and (l), respectively, in Section 4 of Public Law 93-638, of The Indian Self-Determination and Education Assistance Act of 1975 as amended in 1988, have been defined in the section on direct funding, page 5.

"Indian Country" is defined in Title 18 Section 1151 of the United States Code thus: "Except as otherwise provided in sections 1154 and 1156 of this title, the term (Indian Country) as used in this chapter means: (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, and notwithstanding the issuance of any patent, and including rights of way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same."

Section 402, 25 U.S.C. 1322 refers to Title 25 Indians, Chapter 15, Constitutional Rights of Indians, Sub-chapter III Jurisdiction over Criminal and Civil Actions. Note The exceptions in Sections 1154 and 1156 do not apply.

The significance of the two new Welfare Reform provisions is that flexibility and a large number of options are possible for Tribal Nations, and the States, to cooperatively provide child support enforcement services in Indian Country, and to meet statutory requirements.

The new authority does not void any provision of current cooperative agreements nor does it deprive any State of jurisdiction over Indian Country as lawfully exercised under section 401 of the Act cited.

Almost all American Indian Tribes and Alaska Native Village governments have established court systems. Public Law 280 Tribes in 15 States have "Courts of Indian Offenses:" Arizona, California, Florida, Idaho, Michigan, Minnesota, Montana, Nebraska, Nevada, North Dakota, Oregon, South Dakota, Washington, Wisconsin, and Wyoming. However, there are exceptions to Public Law 280 in a few states.

CHILD SUPPORT COLLECTIONS FOR THE EASTERN BAND OF CHEROKEE INDIANS

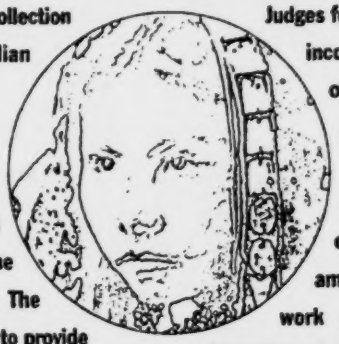
The Court of Indian Offenses for the Eastern Band of Cherokee Indians provides two methods of child support collection for custodial parents who are enrolled members of the Eastern Band, or who have children who are Tribal members. First, court action can be taken against an absent parent by criminal action, or through an action for custody and/or divorce. Second, through an action filed by the State on behalf of the minor child. The second method is the most successful, and provides more services and benefits to Tribal children, according to Diane Hyatt, Clerk of the Cherokee CFR Court.

The Eastern Band of Cherokee Indian Tribe and the State of North Carolina have entered into a formal cooperative agreement. The State has one Child Support Enforcement Office that services several counties in the area, including the reservation. This office, located in Bryson City, 10 miles from Cherokee, provides two case workers to the Cherokee CFR Court, one for intake of new cases, and the other for enforcement of current active cases.

"Parents do not have to go to Bryson City to open a case, as the State case workers come to the Cherokee Indian Agency on a regular basis to allow our residents to initiate actions for support," relates Ms. Hyatt. The Tribe is working toward employing another full time case worker and setting up a child support office on the Reservation to be staffed full time to handle Tribal cases.

The State of North Carolina has implemented the ACTS system of child support reporting, a totally computerized payment system with a turn around time of approximately three days for payments to be credited and forwarded to the recipient.

The Cherokee CFR Court has a satellite modem set up. It is listed the same as a county in the system and has all the capabilities of any other clerk's office in the state. "Having all this information computerized saves many telephone calls and paperwork in the processing and collection of support payments to Indian children," reports Ms. Hyatt.



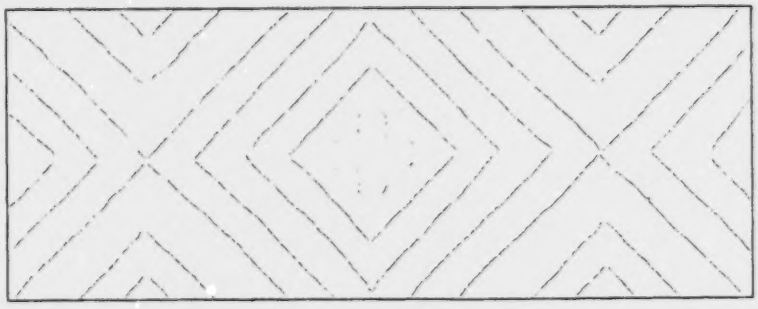
The working relationship between the Court and the local North Carolina Child Support Office is described by court personnel as one of mutual respect and cooperation. The primary objective of both offices is to provide the best services available to enrolled children.

Procedures that have been adopted recently allow custodial parents to file a lien against the per capita check of any enrolled member who is delinquent in his or her support payments. Legislation is being proposed to allow CFR Court Judges to order suspension of drivers licenses, hunting and fishing licenses, and the professional license of anyone who is delinquent with support payments and is held in contempt of court for nonpayment.

All new cases at Eastern Band of Cherokee Indians are being set up for wage withholding, whenever possible. This guarantees that so long as the noncustodial parent is working, the child will receive regular support payments. It also saves the payor time and money by not having to buy money orders, or take time from work to come by the office and make payments.

All amounts are set by the North Carolina Child Support guidelines, which have been approved and adopted by the Conference of the Chief District Court Judges for the State of North Carolina. The income of both parents, along with other pertinent facts such as any other children supported, child care payments, and extraordinary medical expenses are taken into consideration in the guidelines. The amounts are calculated from actual work records, not just from verbal information of the parties. Any time there is a substantial change in the circumstances of either parent, the case can be brought back for recalculation of the support obligation.

A total of $377,747 was collected through the Tribal office for calendar year 1997 for cases set up through the Child Support Enforcement Office. This does not include the collections made through civil judgment or criminal actions. "We were in the top five 'counties' for collections, out of 101 offices in the State in 1997, and are proud of what our office is doing on behalf of our children," Ms. Hyatt said.

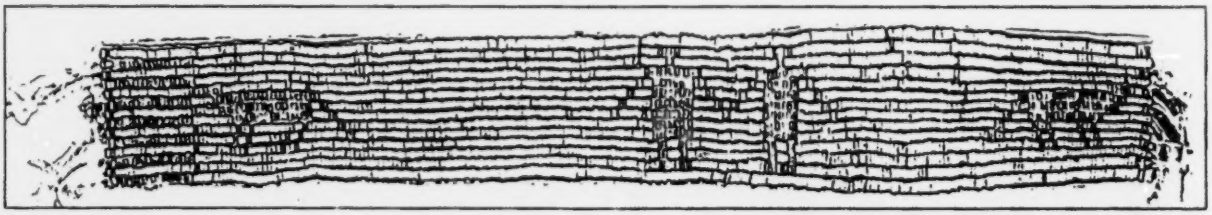


The Era of New Partnerships

To achieve mutually desired child support goals that ensure Native American children receive child support payments, new types of partnerships will need to be forged between the Federal, Tribal and State levels. Such partnerships require all participants to have the historical perspective and an information base from which to develop national, Tribal and State policies and objectives for each governmental level that will allow them to partner to achieve mutual goals.

Each governmental level--Federal, Tribal and State--has a body of experience, expertise, and knowledge to share about child support enforcement in Indian Country. Discussion of this expertise and experience will provide the three governmental levels with a positive impetus to work cooperatively to serve Native children. PRWORA makes new organizational arrangements possible.

The new provisions, by specifically authorizing that Indian Tribes and Tribal organizations receive direct funding to operate child support enforcement programs, and by specifying the



The Wolf Belt celebrated friendly relations between white settlers and Indians

requirements for both Tribes and Tribal organizations and States to enter into cooperative agreements in Indian Country, allow for programs and services to be tailored to Native American family needs and still meet the requirements of the law. They provide specific opportunities for the Tribes to fill gaps in serving Indian children.

All Tribes will have the opportunity to establish or adopt child support guidelines that meet statutory requirements without compromising their customs and cultures. Almost all Tribes have established court systems, and like the States can pass laws specific to child support enforcement requirements. Automation will link Tribes to the National and State Parent Locator Services and the National Directory of New Hires.

Several models of Tribal success in providing child support services through cooperative agreements with the States are included in this resource document. Tribal and State

cooperation has resulted in increased child support to Indian children. These successes are an important part of the foundation upon which to build more Native American child support programs.

The Office of Child Support Enforcement is building upon its Native American continuum and early commitment. Ongoing national Tribal demonstration programs are also described. The Office of Child Support Enforcement will fund Tribal planning grants in Fiscal Year 1998.

OCSE is meeting the challenge for this era of new partnerships by providing Tribes with timely and accurate information, the opportunity for Nation to Nation consultation to provide policy, program and regulatory recommendations, and the practical opportunities and resources to bridge a 20 year program span into the future. The Native American Program is designed to build upon these foundations. The design of OCSE program objectives and steps to serve Native American children will be done within the context of what the Tribes need to know and the recommendations of the Tribes and Native Americans received through consultations.

The Office of Child Support Enforcement has pledged to provide clearly articulated program policy and information; make available planned and sequenced technical assistance; and to carefully consider consultation recommendations about program policy and regulations development with Tribes and Tribal organizations.

This will ensure that all Title IV-D requirements and the PRWORA technical amendment authorities are carried out respecting Tribal customs and cultures, but most importantly, Native American children will receive the child support to which they are entitled.

II. STRENGTHENING THE CIRCLE:

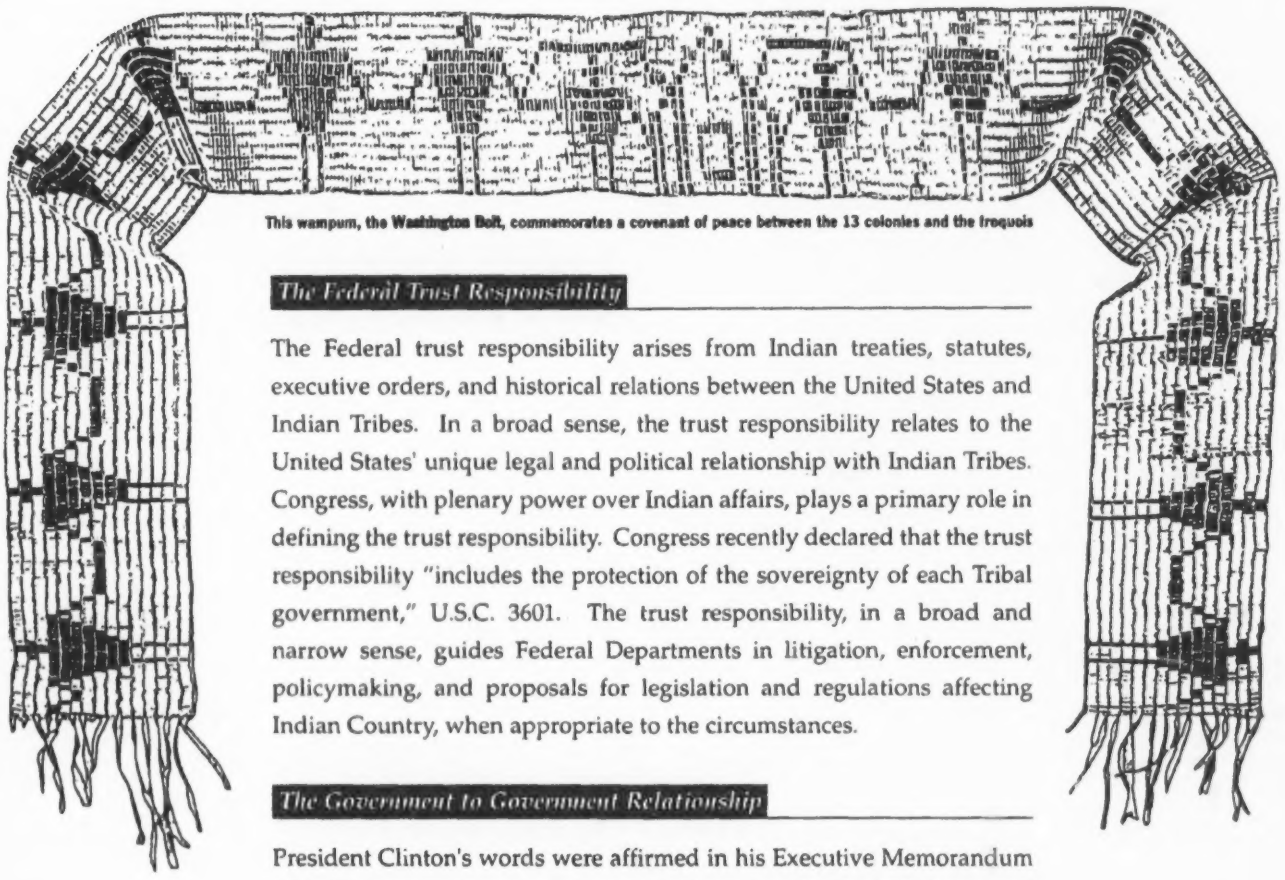
"America is a land of extraordinary diversity, a nation of nations, a place in which over two hundred non-Indian languages are spoken from Florida to California, home for two-thirds of the world's immigrants. Managing such diversity in a population of 250 million people is an extraordinary task.

But it is small compared to the diversity of American Indians, whose 2.2 million people speak two hundred other languages! While they represent less than one percent of the U.S. population, they have as much diversity as the other 99 percent put together."
The Demographics of American Indians: One Percent of the People; Fifty Percent of the Diversity, Center for Demographic Policy, 1990.

Federal Policies and Tribal Consultation

Federal Self-Determination Policy

Self-determination for American Indian Tribes and Alaska Native Village governments is firmly established in law, Federal policy, Congressional commitments, and Presidential Executive Orders and affirmations. In recent history, a President recognized "the right of first Americans...to freedom of choice and self-determination." Another President strongly encouraged "self-determination among the Indian people." A more recent Presidential affirmation pledged to pursue the policy of self-government for Tribes and reaffirmed the "government-to-government" basis for working with Tribes. A later Presidential statement recognized that the Federal government's "efforts to increase Tribal self-governance have brought a renewed sense of pride and empowerment to this country's Native peoples."



This wampum, the Washington Belt, commemorates a covenant of peace between the 13 colonies and the Iroquois

The Federal Trust Responsibility

The Federal trust responsibility arises from Indian treaties, statutes, executive orders, and historical relations between the United States and Indian Tribes. In a broad sense, the trust responsibility relates to the United States' unique legal and political relationship with Indian Tribes. Congress, with plenary power over Indian affairs, plays a primary role in defining the trust responsibility. Congress recently declared that the trust responsibility "includes the protection of the sovereignty of each Tribal government," U.S.C. 3601. The trust responsibility, in a broad and narrow sense, guides Federal Departments in litigation, enforcement, policymaking, and proposals for legislation and regulations affecting Indian Country, when appropriate to the circumstances.

The Government to Government Relationship

President Clinton's words were affirmed in his Executive Memorandum "Government to Government relations between the United States and Indian Tribes" following an historic meeting with Tribal leaders on April 29, 1994. The Executive Memorandum directed executive departments and agencies of the Federal government to ensure that activities that affect Native American Tribal rights or trust resources "be implemented in a knowledgeable, sensitive manner respectful of Tribal sovereignty."

In order to fulfill their missions, Federal agencies are urged to forge strong partnerships with Indian Tribal governments. Partnerships between States and Indian Tribal governments also enable them to better serve the needs of Indian Tribes, Indian people, and the public at large.

Title VI of the U.S. Civil Rights Act of 1964

Title VI requires that agencies that receive Federal funds ensure the right of U.S. citizens and legal immigrants with limited English proficiency to receive the same type and quality of Federally-funded services as those available to the population at large. Title VI states:

> ***"No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal assistance."***

Providing information to, and American Indian and Alaska Native Tribes' participation in designing how to provide Federally funded services, is crucial to ensuring that the Title VI mandate of "providing the same level and quality of Federally-funded services" occurs so that Native American children can receive the child support they deserve.

In May, 1998 the Department of Health and Human Services (HHS) Office of Civil Rights issued a ***Guidance Memorandum: Title VI Prohibition Against National Origin Discrimination--Persons with Limited English Proficiency*** to ensure consistent application of Title VI to programs funded by HHS. Language or communications assistance may be required for effective communication between providers and persons of Limited English Proficiency (LEP) where language barriers cause LEP persons to be excluded from or denied equal access or opportunity to HHS funded programs.

The Office of Civil Rights has spelled out the factors which apply to HHS funded programs to ensure that persons of Limited English Proficiency are not discriminatorily denied equal access to or an opportunity to benefit from HHS programs.

Regulations implementing Title VI are published at 45 C.F. R Part 80. They specifically provide that a recipient of Federal funds may not discriminate and may not directly, or through contractual agreements, use criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin.

The statute and regulations prohibit recipients from adopting and implementing policies and procedures that exclude or have the effect of excluding or limiting the participation of beneficiaries in their programs, services, benefits or activities.

English is the predominant language of the United States and according to the 1990 Census is spoken by 90% of its residents. Of those residents that speak other languages than English in the home, the Census reports that 57% of U.S. residents above the age of four speak English

"well to very well." There are in the United States persons who are limited in their ability to speak, read, write and understand the English language. The language barriers experienced by these LEP persons can result in limiting their access to critical services to which they are legally entitled and can limit their ability to understand what services are available to them.

Because of these language barriers, LEP persons are often excluded from programs or experience delays or denial of services from recipients of Federal assistance. Such exclusions, delays or denials may constitute discrimination on the basis of national origin, in violation of Title VI. Covered entities under Title VI include any State or local agency, private institution or organization, or any public or private individual that operates or engages in HHS funded health or social services programs . The key to ensuring equal access and services is to ensure the service provider and the LEP client can communicate effectively and that agencies have policies to address language assistance needs.

Affirming Tribal Sovereignty

In November 1997 President Clinton reaffirmed the Nation's commitment to Tribal sovereignty in a Proclamation during National American Indian Heritage Month:

This special observation reflects our continuing commitment to American Indian and Alaska Native Tribal governments as an integral part of the social, political and economic fabric of the United States.

The framers of our Constitution incorporated Indian Nations into the political and legal framework of this country, forever joining the destiny of the Tribal Nations with that of the American Indian people. By this action, founders charged themselves and future generations with the moral obligation to guard the rights and fundamental liberties of our country's Tribal peoples as zealously as we protect the rights of all Americans."

The Department of Justice is among the Federal agencies that have issued a policy statement to reaffirm its commitment to Tribal sovereignty. Attorney General Janet Reno issued a directive on June 1, 1995 that began:

> Purpose To reaffirm the Department's recognition of the sovereign status of Federally-recognized Indian Tribes as domestic dependent nations and to reaffirm adherence to the principles of government-to-government relations; to inform Department personnel, other Federal agencies, Federally recognized Indian Tribes, and the public of the Department's working relationships with Federally recognized Tribes; and to guide the Department in its work in the field of Indian Affairs.

National Native American Consultation Policy

In response to the President's 1994 Executive Memorandum, a Working Group on Indian Affairs chaired by the Secretary of the Interior, was established by the Domestic Policy Council (DPC). The Work Group created a subgroup to develop a government-wide consultation policy. Each Department develops its own consultation plans according to its organizational structures, statutes, and administrative processes.

DPC Guidelines specify that each Department address several points in its plans to consult with the Tribes:

- A short "Consultation Plan" to indicate to Tribal governments how consultation in general and timeframes are to be carried out on a particular issue.
- A procedure for receiving Tribal government input and responses,
- Tribal government input into a department's budget formulation process, so it may be useful to Tribal government decision-making.
- Use of the Codetalk Home Page or its own Home Page (with a link to Codetalk) to communicate plans for consultation to the Tribes and the public, and to solicit Tribal comments.
- An American Indian/Alaska Native policy statement be available on the Home Page as soon as possible.

HHS Consultation Policy

On August 7, 1997, Donna E. Shalala, Secretary of the US Department of Health and Human Services, (HHS) which administers the Federal Office of Child Support Enforcement in the Administration for Children and Families, issued a comprehensive statement about the Department's consultation policy with Tribes and Indian organizations.

Based on the recommendations of the HHS Working Group on Consultation with American Indians and Alaska Natives, the Secretary's said:

> ***"A vital component of the [government to government] relationship is consultation between the Federal and Tribal governments. In cases where the government to government relationship does not exist, as with urban Indian centers, inter-Tribal organizations, state-recognized Tribal groups, and other Indian organizations, consultation is encouraged to the extent that there is not a conflict of interest in...Federal statutes or the Operating Division/Staff Division authorizing legislation."***

The Department's statement includes Federally-recognized Tribes and non-Federally recognized Tribes and other Native people. Although the Tribal-Federal relationship is based in part on government to government relationships, the statement notes that other statutes and policies "allow for consultation with non-Federally recognized Tribes and other Indian organizations that, by the mere nature of their business, serve Indian people and might be negatively affected if excluded from the consultation process."

The Department of Health and Human Service's definition of consultation is:

> ***"... an enhanced form of communication which emphasizes trust, respect, shared responsibility. It is an open and free exchange of information and opinion among parties which leads to mutual understanding and comprehension. Consultation is integral to a deliberative process which results in effective collaboration and informed decisionmaking."***

HHS policy is to conduct consultation consistent with the above definition of "consultation." It includes reporting to the appropriate HHS agency, a State's findings and results of the consultation process utilized. An important part of HHS policy is removal of procedural impediments to working directly with Tribal governments. The intent is to routinely share Departmental plans for discussion and learn from Indian people their appropriations needs and priorities.

Each HHS OPDIV (operating division) then further develops its policy and plans according to the guidelines. It delineates those issues on which advice and consultation will be sought. Criteria that will be used to identify goals or issues are identified and Tribal governments and American Indian organizations are invited to participate in decisionmaking processes that affect them. HHS agency conferences, and other intermediate national or regional organization conferences may be utilized to carry out the consultation policy.

A New Executive Order on Consultation and Coordination

On May 14, 1998, President Clinton signed a new Executive Order affirming that the United States has a unique legal relationship with Indian Tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. The Executive Order further confirms recognized Indian Tribes as domestic dependent nations under the protection of the United States, and that as such, Indian Tribes exercise inherent sovereign powers over their members and territory. Also affirmed is that the United States continues to work with Indian Tribes on a government to government basis to address issues concerning Indian Tribal self-government, trust resources, and Indian Tribal and treaty and other rights.

The President, under the authority vested in him by the Constitution and the laws of the United States of America, in order to establish regular and meaningful consultation and collaboration with Indian Tribal governments in the development of regulatory practices on Federal matters that significantly or uniquely affect their communities; to reduce the imposition of unfunded mandates upon Indian Tribal governments; and to streamline the application process for and increase the availability of waivers to Indian Tribal governments, has ordered the following:

1. For purpose of the Order, (a) "State" or "States" are defined as the States of the United States of America, individually or collectively, and, where relevant, to State governments, including units of local government and other political subdivisions established by the States; (b) "Indian Tribe" is defined as an Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a; and "Agency" is defined as any authority of the United States that is an "agency" under 44 U.S.C. 3501(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

2. In the section called Policymaking Criteria, the order states that in formulating policies significantly or uniquely affecting Indian Tribal governments, agencies shall be guided, to the extent permitted by law, by principles of respect for Indian Tribal self-government and sovereignty, for Tribal treaty and other rights, and for responsibilities that arise from the unique legal relationship between the Federal government and Indian Tribal governments.

3. In the Consultation section, the order details, in two subsections, that (a) each agency must have an effective process to permit elected officials and other representatives of Indian Tribal governments to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities; and (b) to the extent practicable and permitted by law, that no agency promulgate any regulation not required by statute, that significantly or uniquely affects the communities of the Indian Tribal governments, and that imposes substantial direct compliance costs on such communities, unless:

   (1) the funds necessary to pay the direct costs incurred by the Indian Tribal government in complying with the regulation are provided; or

   (2) the agency, prior to the formal promulgation of the regulation,

   (A) in the preamble to the regulation in the Federal Register, provides to the Office of Management and Budget (OMB) a description of the agency's prior consultation with representatives of affected Indian Tribal governments, a summary of the nature of their concerns, and the agency's position supporting the need to issue the regulation; and (B) makes available to OMB any written communications submitted to the agency by such Indian Tribal governments.

4. The section Increasing Flexibility for Indian Tribal Waivers requires (a) agencies to review the processes under which Indian Tribal governments apply for waivers of statutory and regulatory requirements and to streamline the processes, and (b) that each agency, if practicable and permitted by law, consider any application by an Indian Tribal government for a waiver of statutory or regulatory requirements for programs administered by that agency, with a general view toward increasing opportunities to utilize flexible policy approaches at the Indian Tribal level in cases in which the proposed waiver is consistent with the applicable Federal policy objectives and otherwise appropriate.

Subsection (c) of this section asks each agency to render a decision upon complete application for a waiver within 120 days of receipt. The agency is to provide applicants with timely written notice of the decision and, if the waiver is not granted, the reasons for the denial. Subsection (d) notes that

section 4 applies only to statutory or regulatory requirements that are discretionary and subject to waiver by an agency.

5. This section Cooperation in Developing Regulations states that on issues relating to Tribal self-government, trust resources, or treaty and other rights, each agency should explore and, where appropriate, use consensual mechanisms to develop regulations, including negotiated rulemaking.

6. Independent regulatory agencies are encouraged to comply with the provisions of the order.

7. The order explains that it is intended only to improve the internal management of the executive branch and is not intended to, nor does it create any right, benefit, or trust responsibility of any kind enforceable by law or equity by a party against the United States. The order supplements, but does not supersede Executive Order (EO) 12866 requirements on regulatory planning and review, EO 12988 on civil justice reform, OMB Circular A-19, and the Executive Memorandum of April 24, 1994, on Government-to-Government Relations with Native American Tribal Governments.

The Child Support Enforcement Program

"...Child support can make a real difference in managing food, shelter, clothing, medical and dental expenses...these necessities play a powerful role in the development of children. We're also learning ...regular child support is linked to more years of school attendance, increases in grade point averages, and reductions in behavior problems -- The point, one that sometimes gets lost in debate over payment of an obligation, is that children need the emotional and financial support and the involvement of both parents in their lives. They need to know that both parents love and care for them. And those children who receive this support are better off--financially and in other ways." -David Gray Ross, Commissioner, Federal Office of Child Support Enforcement (OCSE)

Federal and State Child Support Enforcement

Child support enforcement is a vital component of strengthening America's families. The Administration for Children and Families and the Office of Child Support Enforcement are committed to a vision of strong supportive communities where families and individuals are empowered to increase their economic independence, productivity and well being. Child support enforcement contributes to the protection and healthy development of children and the well being of their families.

Child support enforcement services have been provided through the Federal and State governments for over 20 years beginning in 1975 when the Child Support Enforcement Program was established by Federal law as Title IV-D of the Social Security Act. Enacted as the Child Support Enforcement Act, the general goals have been to ensure that children have the financial support of both parents, to foster responsible behavior towards children, and to reduce welfare costs.

The goal of the nation's Child Support Enforcement (CSE) Program is to ensure that millions of children are supported financially and emotionally by both their separated, divorced, or never married parents. The CSE Program is a joint partnership of Federal, State and local plans, each with its own laws and procedures to administer the progams, that will now include Tribal plans with their own laws and procedures in the partnership.

Initially the IV-D Program, as it is also called, was implemented to recover AFDC expenditures. It was then extended to serve nonassistance families as an alternative to public assistance. (AFDC is now TANF, Temporary Assistance for Needy Families.)

The problem being addressed nationally is that half of all marriages end in divorce. Over 30% of newborns are born out of wedlock. And almost 20% of children live in poverty. The child support caseload has increased from thousands of cases in early years, to more than 19.3 million cases in 1996. This includes 10 million TANF cases and 9.3 million non-TANF cases. Fifty percent of the cases receive minimal or no support for the children. In 1995, fewer than 27% of never married parents had a support order.

According to the 1990 Census 61 percent of Native American families had children under 18 years of age. Over 55 percent of all Native American children under the age of 18 lived with two parents. Native American households are concentrated in the States of Oklahoma, California, Arizona, New Mexico, Washington and Alaska.

The Child Support Enforcement Program is a Federal program that has been implemented by the States. The Federal government pays at least 66 percent of the cost of the program, but there are other funding streams. In 1996 the program expenditures were $3.1 billion.

In fiscal year 1996, States were able to:

- Establish more than 1 million paternities through their agencies and in-hospital paternities
- Establish 1,081,981 new support orders
- Locate 5,779.489 non-custodial parents
- Collect a record $12 billion in child support payments, and
- Recover 15.5 percent of AFDC (now TANF) payments

A family obtains automatic IV-D, or child support enforcement, services when it applies for, and receives, public assistance. It assigns its right to collection to the State until the assistance amount is repaid, and must meet cooperation requirements in locating the noncustodial parent. Families may also apply for "nonassistance" child support enforcement services, usually for a small fee.

With the passage of PRWORA, the Secretary of the Department of Health and Human resources may make direct payments to Indian Tribes with approved child support enforcement plans. Consultation, and the development of the policy and process for this is underway. The new law also authorizes States to enter into cooperative agreements with Indian Tribes or organizations if the Tribe has an established Tribal court system or Court of Indian Offenses.

The Child Support Enforcement Program provides five major services:

- Locating noncustodial parents using the resources of State and Federal Parent Locator Services and other methods;
- Establishing paternity (legally identifying a child's father), a necessary step to obtain a child support order if a child is born out of wedlock;
- Establishing child support orders through a court or through expedited administrative procedures using State guidelines on how much a parent should pay for child support and how to provide medical support;
- Enforcing child support orders--through income withholding, through income tax refund withholding, liens against property, reporting unpaid child support to credit reporting bureaus, and suspending drivers, professional, occupational and recreational licenses if support is not being paid; and
- Collecting and distributing the child support. State databases track cases and collections through centralized State processes and payment disbursement.

A 36 month cycle is recommended for review and adjustment of the child support order. Currently orders are reviewed against State-determined criteria at the request of either party or a IV-D agency.

Briefly, the Federal Office of Child Support Enforcement, through its Central Office in Washington DC and in ten Regional Offices in Boston, New York, Philadelphia, Atlanta, Chicago, Dallas, Denver, Kansas City, San Francisco and Seattle:

- Oversees the administration of the child support enforcement program nationally
- Determines child support enforcement program priorities, policies, and standards
- Implements the OCSE Strategic Plan developed with the States to meet its outcome targets and Title IV-D requirements
- Works with State and county social services departments, State attorney generals, and the Department of Justice on compliance issues
- Funds the various income streams to operate the program in each State
- Provides technical assistance and training to the States through the National Training Center and the National Resource Center
- Maintains Federal databases that bolster location efforts: the Federal Parent Locator Service, the National Directory of New Hires, and the Federal Case Registry of Child Support Orders
- Conducts assessments of State performance, and
- Liaisons with other Federal agencies such as the Internal Revenue Service and the Justice Department to carry out all the legal mandates of the program

New enforcement techniques now in effect through PRWORA are:

- The National and State New Hire Reporting system that all U.S. businesses must report to routinely to locate parents
- Expedited administrative enforcement procedures that can replace some court procedures and move cases faster
- Streamlined and uniform paternity establishment procedures
- Uniform Interstate Family Support Act (UIFSA) to speed up interstate cases
- Computerized Statewide case monitoring and tracking systems
- Expansion of wage garnishment, required community service in some cases, and suspension of all licenses

The States have substantial flexibility to pursue innovative child support enforcement initiatives to meet paternity establishment and collection goals. President Clinton approved a record 43 welfare reform waivers allowing States to design their own initiatives to administer the law and meet program goals. Each waiver required a formal evaluation prior to its approval. Waivers had to be cost neutral to the Federal government.

The Creation of the Child Support Enforcement Program

It is important to know the legislative history of the CSE program and how it has been implemented for over 20 years, as well as to have an understanding of the basic and expanded statutory requirements in order to address the goals and issues pertinent to a Child Support Enforcement Native American Program, and the operational implications of direct funding to Tribes or their entering into cooperative agreements with the States.

A detailed legislative summary in the Appendix at the end of this publication highlights the important milestones of the program.

The Personal Responsibility & Work Opportunity Reconciliation Act of 1996 (PRWORA) Public Law 104-193

PRWORA, the welfare reform law, added many new requirements for administering the child support enforcement program. A State has to certify that it will operate a child support program under the State plan approved under part D of the Act. TANF assistance can be reduced or denied for any individual not cooperating with a child support agency.

States must require that a member of a family receiving TANF assistance assign any right to child support, not to exceed the total amount of assistance received, before the family leaves assistance, according to a formula.

States are obligated to provide child support enforcement services for each child receiving assistance under Titles IV-A Temporary Assistance for Needy Families, IV-E Foster Care and Adoption, and Title XIX Medical Assistance Programs. Child support enforcement services must be provided to everyone who applies for services.

The priorities for distribution of collected support have been changed: Families leaving welfare will now receive priority. Privacy safeguards protect privacy rights with regard to confidential information. States are required to have procedures for providing notices of proceedings and copies of orders to recipients of program services.

A central State registry of child support cases is required, including maintaining and updating payment records and extracting data for matching with other databases. It allows for automatic linkage between local registries.

PRWORA now requires centralized collection and disbursement of support payments, including monitoring of payments, generating wage withholding notices, automatic use of administrative enforcement remedies. Sufficient staff to carry out these activities is required. Linkages are permitted to form the centralized State disbursement unit under certain conditions. Distribution is required within two business days of receipt of collection and transmission of withholding orders to employers within two business days of notice of income source with certain exceptions.

Employers and labor organizations must report names, address, social security number and employer identification number on all new hires to a State Directory of New Hires within 20 days of hire. Reporting on a W-4 or equivalent is required; there is a multi-State provision; there are State options for a nominal penalty for failure to report; enhanced penalties for conspiracy; a deadline for entry of data; data-base matching and reporting to any State; and reporting information to the National Directory of New Hires within three business days.

PRWORA expands income withholding from wages to pay child support, adds a State law requirement and revises current statutory language governing providing notices about wage withholding actions and procedures for contesting actions. It provides rules for choice of law in interstate wage withholding.

There are requirements for access to locator information from State motor vehicle and law enforcement systems.

The Federal Parent Locator Service (FPLS) authority is expanded. It permits access to the FPLS for the enforcement of child custody and visitation orders but requests must come through the courts or child support agencies. There is a section that grants the rights of governmental entities to fee reimbursment. Other requirements include establishing a Federal Case Registry of child support orders and details guidelines for the National Directory of New Hires including entering data within two days of receipt. The Social Security Administration is called upon to verify social security numbers. Certain disclosures are allowed.

Also required is the use of Social Security Numbers on applications for professional licenses, commercial driver's licenses, occupational license or marriage licenses and in records of divorce decrees, support orders, paternity determinations or acknowledgments and death certificates.

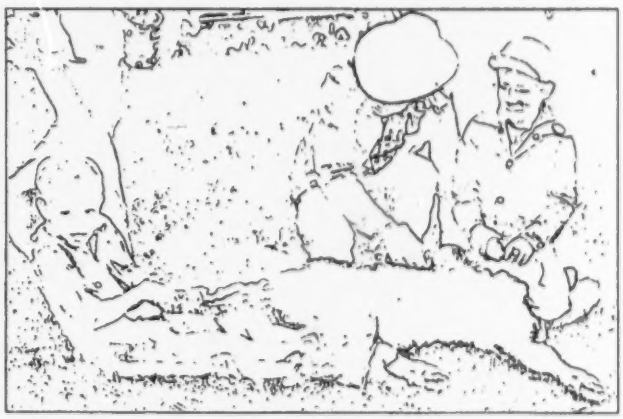
PRWORA mandates the adoption of the Uniform Interstate Family Support Act, UIFSA. It makes improvements to full faith and credit for child support orders, clarifying priorities for recognition of orders. Administrative enforcement in interstate cases requires States to respond within five business days to a request from another State to enforce a support order.

Nationally, forms were designed to be used in interstate income withholding cases, imposition of liens, and administrative subpoenas across State lines, after consultation with State IV-D Directors.

PRWORA grants State IV-D programs the authority to take action "without the necessity of obtaining an order from any other judicial or administrative tribunal, but subject to due process safeguards as appropriate." This includes ordering genetic testing, issuing a subpoena for financial or other information and requiring all entities to respond to requests for information. States are granted access to a number of public records, as well as private records such as public utility and cable television records and financial institution data.

State legal processes are streamlined for paternity establishment. It is allowed any time before age 18 and there is mandatory testing in contested cases. PRWORA enhances certain processes; addresses voluntary acknowledgment. It does not allow for trial by jury and requires OCSE to develop mandatory elements for a universal paternity acknowl-edgment affidavit.

PRWORA mandates State programs to publicize availability and encourages use of procedures for voluntary establishment of paternity and child support. Welfare reform specifically shifts to the State IV-D agencies the responsibility for determining and redetermining whether TANF recipient families are cooperating with child support enforcement efforts. It specifies that a State must require recipients to cooperate, promptly notify the person and the State IV-A agency of the determination and basis for any finding of noncooperation.



The Federal Office of Child Support Enforcement is to develop a new incentive system for additional payments to any State based on performance in its paternity program for fiscal year 1999; the incentive system is to be cost neutral. The IV-D paternity establishment percentage (PEP) is changed so States with PEP from 75 to 90 percent must improve two percent per year.

The audit process is to be based on performance measures. States are to collect and report program data uniformly as a State Plan requirement. The requirements for the State automated data processing systems are revised with a new implementation timetable to meet all Federal IV-D requirements up through the enactment of the Family Support Act of 1988. October 1, 2000 is the deadline for implementation of new requirements. The deadline is extended if OCSE does not meet final regulations deadline. It sets funding to 80 percent for new requirements with a $400 million cap on aggregate spending.

PRWORA sets aside one percent of the Federal share of reimbursed public assistance for information dissemination and technical assistance to States, training of State and Federal staff, staffing studies and related activities needed to improve programs including technical assistance on state automated systems; and research, demonstration, and special projects of regional or national significance relating to the operation of State programs. An additional two percent is set aside for the operation of the Federal Parent Locator Service to conduct its expanded responsibilities, including those for interstate cases.

Other provisions cover a simplified process for review and adjustment of child support orders; furnishing consumer reports for certain purposes relating to child support; nonliability for depository institutions providing financial records to state child support enforcement agencies in child support cases; authority to collect support from Federal employees; enforcement of child support obligations of members of the Armed Forces; voiding of fraudulent transfers; work requirements for persons owing child support; definition of an order; reporting arrearages to Credit Bureaus; liens; State law authorizing suspension of licenses; denial of passports for nonpayment of child support.

Also covered are international child support; financial institution data matches; enforcement of orders against paternal grandparents in cases of minor parents; nondischargeability in bankruptcy of certain debts for the support of a child; the provisions for child support enforcement for Indian Tribes which are discussed later in terms of the technical amendments to P.L. 105-33, the Balanced Budget Act; technical corrections; enforcement of orders for health care coverage; and grants to States for access and visitation programs.

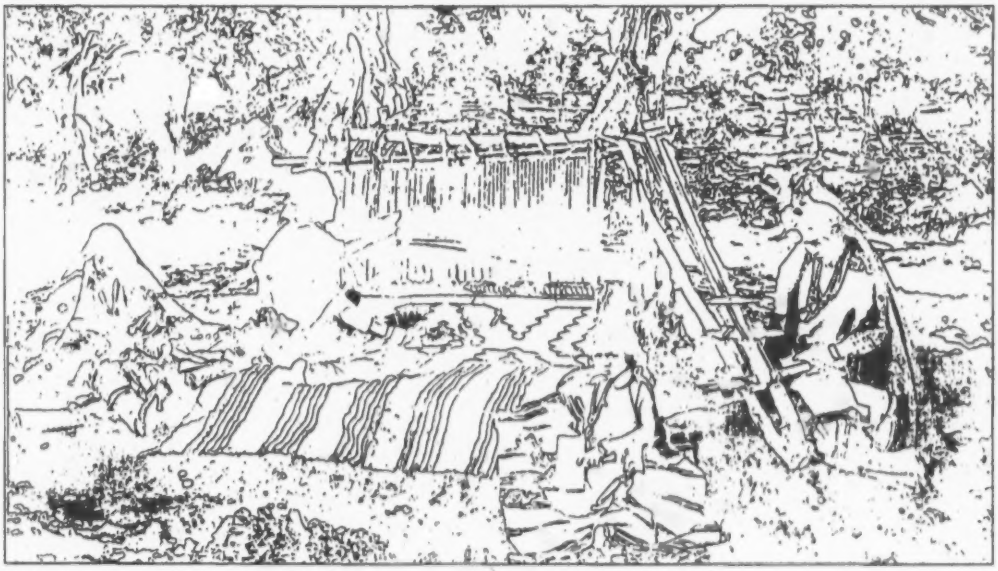
"Indian children whose parents reside in Indian Country have a unique problem with regard to the collection of child support. The principal agency for collection of child support, the [State or local] Title IV-D agencies, oftentimes have no understanding of Indian law and must also abide by Federal regulations...The result is that Indian children have been the victims of benign neglect in the enforcement of child support obligations when the absent parent resides in Indian Country." -- B.J. Jones, Esquire, Director, Northern Plains Judicial Institute, University of North Dakota School of Law

Until PRWORA the existing law did not specifically mention Tribes or Native Americans even though they are covered under the law. Many Indian families could only receive enforcement protection if there was jurisdictional cooperation between the State and Tribal governments. Jurisdictional cooperation is necessary in order to provide services to Indian children where one of the parents resides on a reservation. The challenges have been to understand the sovereign status of a Tribe as a governmental entity, the status of the Tribal lands within a State, whether there are jurisdictional parameters involved, and Tribal standards and practices that might vary from the State's. Working cooperatively ensures that Native American children will receive the child support protections afforded to all children.

Some States have adopted policies that support Tribes both philosophically and with resources to achieve mutual child support enforcement goals. Others understand and support a Tribe's right to assume responsibility for its members and each member's financial and economic needs within its traditions and culture.

Other assistance that a State has provided has been the necessary training to accomplish the purposes of entering into a State/Tribe cooperative agreement and the Federal child support enforcement requirements. States that have explained the Federal requirements and funding process have helped Tribes to decide whether to negotiate and enter into a cooperative agreement.

Over the last 20 years, to resolve the jurisdictional issues involved in providing child support services in Indian Country, a few Tribes have provided CSE services in various capacities. The most common



process used to do this has been through negotiated informal agreements, cooperative agreements, or inter-governmental joint powers agreements between a Tribe and a State.

Informal agreements were negotiated between the Seminole Tribe of Florida and the State for child support services to Tribal members, as well as between the Shoshone and Arapahoe Tribes and the State of Wyoming. The Eastern Band of Cherokee in North Carolina and the Colorado River Indian Tribes have written cooperative agreements with North Carolina and Wyoming.

The Navajo Nation reservation spans four States. It provides all child support services in New Mexico through a joint powers intergovernmental agreement with the State of New Mexico. The New Mexico legislature approved $150,000 in funds, matched with Federal financial participation, for the initial start-up costs of acquiring, equipping with telephones and computers, and staffing offices on the reservation.

An example of State-Tribal cooperation where jurisdiction is concurrent under Public Law 280 is the State of Washington. In 1990 the State established a central Tribal Child Support Office with one employee. It grew to four full-time staff. This success has been largely due to the fact that the staff is Native American, which brings to the services to be provided the necessary knowledge and understanding of Tribal governmental infrastructures, governance and social customs.

The Washington State Tribal Child Support Office hosted three statewide conferences. It paid for the travel for Tribal leaders from the 27 Tribes in the State. This commitment, to Native American children, of State resources resulted in a State-Tribal Relations Work Group that meets quarterly.

Each Washington State child support Field Office has at least one Tribal liaison. Each liaison has received training on Tribal culture and values, and the governmental structures of each Tribe. The liaison handles a specialized case load of individual Indian cases. Most case workers in the Field Offices rotate cases, but Tribal liaisons keep their cases. One attorney in each field office is licensed to practice in Tribal courts through reciprocal privilege granted by the Tribes. This is a special delegation of authority to the attorney because most field claims in the State are handled by the Assistant Attorney General's Office.

Federal Tribal Initiatives

The Federal Office of Child Support Enforcement began several years ago to fund projects to demonstrate new approaches to Tribal-State cooperation with the goal of improving the delivery of child support services in Indian Country. Currently, four Tribal-State projects are underway under Section 1115 of the Social Security Act.

Northern Plains Tribal Judicial Training Institute Model Codes

The North Dakota Department of Human Services has contracted with the Northern Plains Tribal Judicial Training Institute at the University of North Dakota. The contract is to draft Tribal codes designed to meet Federal requirements. These model child support codes will be drafted for each of the four Tribes in North Dakota. Each Tribal Council and Tribal Judiciary are expected to participate in the project.

Northwest Tribal Court Judges Association Bench Book

The Washington State Department of Social and Health Services, in conjunction with the Northwest Tribal Judges Association, is developing a model process for working with Tribal Courts to facilitate serving Native American children with child support services. This will include drafting a Tribal Court Bench Book on child support enforcement and Tribal laws. This project is expected to continue through February 1999.

The Menominee Tribal Ordinance on Child Support

Wisconsin has contracted with the Menominee Tribe to update its Ordinance on child support and to develop a Procedures Manual. It is planned that over the period of the project, Tribal child support cases will be transitioned from a county to a Tribal child support enforcement agency. This project is expected to continue through February 1999.

The Chickasaw Nation Demonstration

The Chickasaw Nation, a non-land-based Tribe, is the first Tribe to enforce child support orders on Native Americans off a reservation, and is the second in the United States to enforce Tribal support orders. The Oklahoma Department of Human Services established

a training program in conjunction with the Chickasaw Nation to train State CSE personnel about Native American culture and values.

The State of Oklahoma and the Chickasaw Nation developed a financial cooperative agreement for the provision of child support services to Tribal members. It also provides for developing a working relationship between the Tribe's CFR Court and the State courts to handle Tribal cases. The Tribe has adopted an administrative process. Its Child Support Services Program in the Department of Family Advocacy, now provides enforcement services for Tribal child support orders, establishes paternity, establishes child support orders, and provides locate services for custodial parents searching for absent noncustodial parents.

THE CHICKASAW NATION CHILD SUPPORT ENFORCEMENT SERVICES

The Chickasaw Nation in south central Oklahoma covers more than 7,648 square miles. Ada is its headquarters, with regional offices in Ardmore, Tishomingo, and Purcell. With approximately 39,000 enrolled members, the total Indian population living within the Nation is about 30,000. This includes members of 18 different Indian Tribes.

Within the boundaries of the Chickasaw Nation, there are over 10,000 Native American child support orders. About 3,000 are orders issued by Courts of Indian Offenses. An estimated 2,500 of these require assistance in enforcing the child support order or establishing paternity. There are three Courts of Indian Offenses utilized by Chickasaw members.

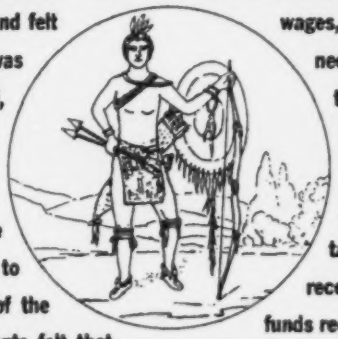
Prior to establishing the Chickasaw Nation Child Support Services Program in its Department of Family Advocacy, Tribal orders were enforced by overworked State offices. At no fault of State CSE personnel, Indian children who had Tribal orders suffered because the State personnel lacked training on how to handle them and there was no State jurisdiction for handling Tribal orders.

The Chickasaw Nation's child support program began June 2, 1997. Through a Cooperative Agreement between the Federal government, the State and the Chickasaw Nation, Indian children are now receiving child support.

"The process to get the program on line has not been easy, but well worth it," reports Jerry Sweet, the CSE Coordinator for the Chickasaw Child Support Services (CSS) agency. "Educating Tribal members, as well as State personnel on the importance of establishing this program was a challenge." Tribal sovereignty had to be protected. Tribal statutes had to be drafted prior to accepting applications for child support enforcement assistance. An agreement between the Court of Indian Offenses and the Chickasaw Nation also had to be reached. Custodial parents and Tribal members had to be interviewed.

During the first five months, interviews were conducted with custodial parents, Tribal judges, State agencies, senior citizens, and various Tribal members. By conducting interviews prior to bringing the CSS program on-line, the need for the program and that Tribal members would support it was documented.

Mr. Sweet relates that within the Chickasaw Nation, elderly grandparents often raise their grandchildren on a fixed income to ensure that the children's needs are met. Most of them will not ask State agencies for help, but will turn to a Tribal agency. Those interviewed wanted the program and felt that if the mother or father was receiving child support as ordered, they could then afford to raise their own children themselves.



Custodial parents felt that State agencies were not doing enough to assist them in the enforcement of the Tribal support orders. Most parents felt that because they were Indians, their orders were being put aside and States orders given priority. They felt their needs could be met by a Tribal child support enforcement office.

The two judges assigned to the Court of Indian Offenses in Ada support the program "100 percent". They provided crucial data for the new program. They wanted the program for two reasons: One, too many cases were before the court where the issue may be resolved or adjudicated prior to a court hearing. Secondly, that wage withholding be handled by the child support office to free up their courts for matters that cannot be handled outside of court.

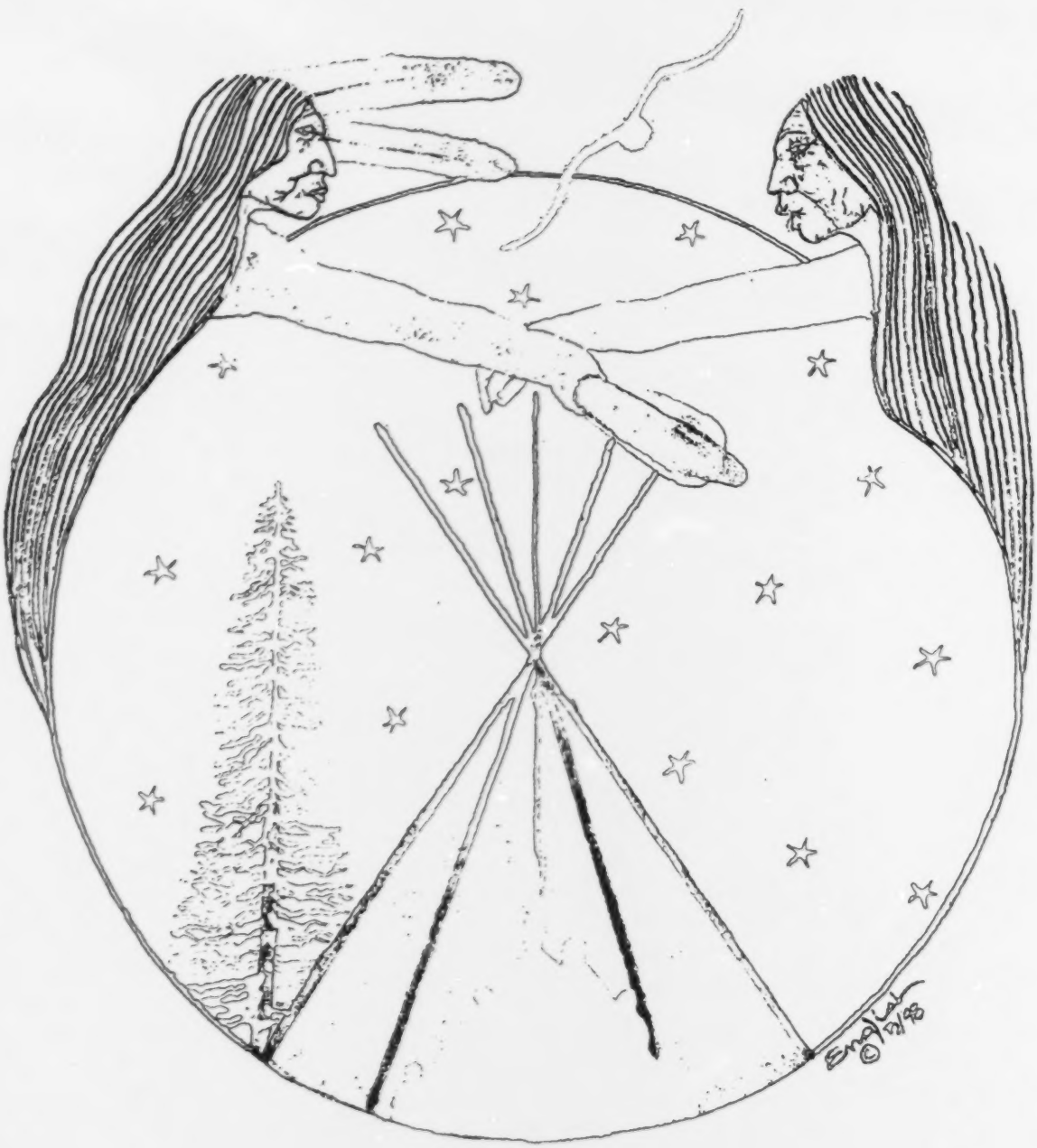
February 1998 was the first month that IV-D applications for services were made available to enforce Tribal support orders or establish paternity. Advertisements were placed in the Tribal month and weekly newsletters. Over 60 applications were requested immediately. By March 1, 20 applications for services had been returned to the CSS office. Fifteen demands for payments have been issued, eight non-custodial parents have responded and there are paid collections of approximately $2,200. Two cases are pending court hearings. Three cases are pending contempt hearings. Calls are received daily requesting information about the program services.

Through the Court of Indian Offenses, CSS will be able to suspend driver's licenses, professional licenses, hunting and fishing licenses, attach wages, schedule court hearings, and if needed, request a sentence of jail time. CSS will utilize Oklahoma's child support computerized system to locate absent parents, monitor cases and payments, and intercept tax refunds and will verify who is receiving State assistance and have funds redirected to the State. This process alone will save the State of Oklahoma thousands of dollars annually.

The vision of the Chickasaw Nation program is to encourage other Tribes to commit to providing child support enforcement services to their members or to sub-contract with a Tribe who is providing those services, according to Mr. Sweet. Using Title 25 of the CFR to draft their own child support statute, Tribal sovereignty was not jeopardized. Children are entitled child support and to paternity establishment to determine the child's place within the Tribe.

The goal of the CSS is to ensure that every Indian child within the jurisdiction of the Chickasaw Nation receives what is due to her or him. The program advocates that parents are responsible for the support of their children, not the Tribe or State agencies, and that in order to protect the Tribe's future, Indian children must be protected.

III. STRENGTHENING THE CIRCLE:



Tribal Traditions of Supporting Children

For thousands of years American Indians and Alaska Natives have been guided by tradition in raising their children. While practices vary from Tribe to Tribe, certain beliefs, such as the acceptance of a Circle of Life, are nearly universal among Native peoples.

You have noticed that everything an Indian does is in a circle, and that is because the Power of the World always works in circles, and everything tries to be round...The sky is round and so are all the stars. The wind, in its greatest power, whirls. Birds make their nests in circles for theirs is the same religion as ours. The sun comes forth and goes down again in a circle. The moon does the same, and both are round. Even the seasons form a great circle in their changing and always coming back again to where they were. The life of a man is a circle from childhood to childhood and so it is in everything where power moves. --Black Elk, Oglala Lakota, 1930

Native perceptions of existence accept the spiritual connectedness of the known and unknown. Negative and positive forces, female and male energy, life and death, all balance each other in a holistic circle. No one component is more important than any other. Beyond the different Tribal languages, spiritual practices and worship, lies a common belief in the paramount importance of harmony--a balanced state of being in which one knows one's place in the universe, is in touch with the physical and spiritual environment, and is centered with the forces of Creation. Each Tribe has its own term for what the Lakotas call being "on the Red Road."

Life is like nature. We are born in the spring when the flowers come up, when other small animals are born also. The world is happy. We enter the summer to learn how to gather food and the animals gather nuts for the winter. The snow comes and covers our Mother Earth with a blanket and She goes to sleep. The old people too have to cover up in the winter. Some old people will die...When the spring comes, the Mother Earth will remember the old people and she sheds tears, rain, to give new life to the flowers and cleans Mother Earth so that the cycle can begin again. --Ed Edmo, Shoshone-Bannock

Native American Families

In terms of the family, the Circle includes the Tribe, clan and extended family. Uncles, aunts, grandparents, cousins in maternal and paternal families all have established roles to play in child rearing and maintaining group well-being.

> ***Our way of life is cyclical and the first circle is the family...The heart of the family is the mother. Because life comes from her, the children are the essence of the future. When our circle expands, it extends to the larger family which is the clan, the Nation, and all of Creation. --Tonya Gonnella Frichner, Onondaga Nation, Snipe Clan***

Individual Tribes look to different members of the extended family to take primary responsibility for different phases of a child's upbringing. In the Jicarilla Apache Nation, maternal aunts are considered mothers to all maternally-related nieces and nephews. Fathers are expected to provide food and shelter for their families. On many southwestern reservations, grandparents are the disciplinarians of the children in the family. The parent's role, on the other hand is to shower the child with love.

> ***One of the significant differences between Navajo family structure and that of the ordinary middle-class Americans is the relationship of the child to a number of caring people. In general, the relationship to aunts and uncles is much more important in the Navajo family than it is to the middle-class American family. A great deal more responsibility is given to other members of the extended family, and there is considerable attachment of the child to the entire group.--Leonard B. Jimson, "Parent and Child Relationships in Law and Navajo Custom," The Destruction of American Indian Families, 1977.***

The healthy extended family does not foster dependence and does not stifle independence. Rather, it is a system in which everyone contributes in some way without expectation of reward or payback...Kinship, how we act as a system and how we sustain each other will greatly influence the balance of our lives. --Terry Cross, "Honoring the Children," National Indian Child Welfare Association, 1994.

Traditionally, the survival and well-being of an individual or family are considered synonymous with the survival and well-being of the whole community and society. A spirit of cooperation and sharing is essential for harmony and balance. Thus it is not unusual for a Native American child to be raised in several households over time, since belief holds it is a pleasure as well as a duty of all members to share responsibility for children. Further, most Tribes consider the values of providing emotional and spiritual guidance to be as equally important as the provision of food and shelter.

It was a privilege to have children...Children are sacred. They are living treasures, gifts from the Great Spirit. You always treated them as if they didn't belong to you, they belonged to the Creator. --Betty Laverdere, Ojibwa

Many Tribes believe that children are special gifts from the Creator. Tribal elders encourage positive relationships between parents and children through praise and reassurance. Prophecies are often made concerning a child's worth and future. Through rites of passage and naming ceremonies, the whole community recognizes a child's development and helps the child to establish her or his identity in the Tribe. Telling legends to children teaches them to listen, to observe well, and to regard the words as sacred.

The idea that everything has a purpose encourages mutual respect and therefore harmony. In some Tribes, it is the tradition for the parents to show respect for the choices and decisions of even very young children.

When a person got out of balance or harmony with the right way of things, then there was trouble. Anger, mental illness and violence were seen in some Tribes as being out of harmony. By careful attention to one's own relationship with the ways of things, a person could stay in harmony. By creating a world which was harmonious for the child, the family provided a necessary part of care. --The Old Ways Oral Tradition, author unknown.

Reuniting Fathers

Indian fathers are traditionally viewed as providers, protectors, teachers, guides, role models, leaders, and nurturers. Fathers are an important part of the family balance and can contribute strength to the family system regardless of whether they are present in the home. In an often harsh world, many Native American fathers believe that their example as role models is crucial in teaching children the difference between cultural pride and self-hatred.

Reuniting Native American fathers and their children is important for a Tribe as a whole in multiple ways. Knowing who and where the father is, not only affects his children and other family members wanting to reclaim kinship ties, but also Tribal governments attempting to maintain accurate enrollment numbers of surviving members. Tribal membership has a direct effect on Federal benefits for which the Tribe may be eligible. Membership also has implications for legal jurisdiction, inheritance of restricted or trust lands, and voting rights. Thus, the loss of a loving extended family community of aunts, uncles, and grandparents who could enrich the child's life and connect the child to her or his heritage may be compounded by the loss of legal rights--medical and life insurance, social security and veteran's benefits, and Tribal membership.

Family Balance

The power of example is valued. Celebrations and ceremonies are opportunities to demonstrate the "good" or "right" way of doing things. Older children are taught that younger ones are watching and to be responsible for providing a good image for the little ones.

Lessons from nature were instilled into children at a very young age, partly through storytelling...Small babies were included in the storytelling. As children grew older, they learned to understand some of the lessons of storytelling: To share and get along well with others, to watch out for those smaller and not be mean. There was a strong social responsibility in a Tribe and everyone had to get along, and the common goal was to have a good life for all. --Ed Edmo, Shoshonne-Bannock, Internationally acclaimed poet, traditional storyteller, and playwright, "Honoring the Children," National Indian Child Welfare Association, 1994.

In carrying out the new child support amendments to PRWORA outlined in this publication,

American Indian Tribes and individuals, Alaska Native Village Governments and individuals, and Tribal organizations will have the opportunity, through the consultation process, to determine how to meet the child support requirements without compromising Tribal family traditions.

Many Native Americans would consider the absence of a parent in a child's life to signal that the parent is "out of the circle." The challenge when this occurs, according to Chief Justice Robert Yazzie of the Navajo Nation, is to resolve the reasons for the absence in a holistic and loving way, and to use the courts as resources for resolving, rather than creating conflicts among family members. Many Tribes take account of extended family traditions in which children are raised by relatives other than their biological parents.

Organic Law--The Narragansett Tribe of Rhode Island

The Narragansett Tribe of Rhode Island continues to follow and be governed by "organic law," described as "the ancient philosophy of our way of life." It is a philosophy of checks and balances that embraces spirituality as well as physical needs, that rejects the individualistic concept of "I" or "me," and views families as part of the greater circle of life.

Custom under organic law holds that children are honored as gifts from the Creator and are taught a deep level of respect and honor for their parents. Traditionally, Northeastern Indian children are also raised by aunts and uncles or grandparents. Most of these Tribes, including the Narragansett are matrilineal, holding women in high esteem.

The concept of criminality is viewed very differently between Tribal and non-Indian cultures. To the Narragansetts, a crime is an offense against the Creator. The true meaning of health and well-being is not measured solely as material goods or financial payments.

"How can $50 compare," asks Wenonah Mars, the Narragansett Tribal Child Advocate, "to taking a child for a walk on ancestral grounds, making him aware of his history, his relationship to nature?" The trees in the forest and fish in the seas are brothers. Organic law holds all are related.

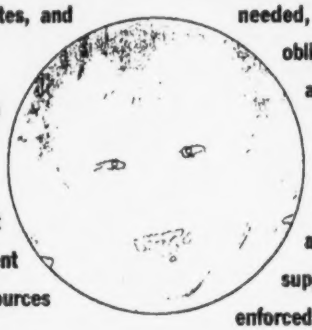
Ms. Mars is the Director of Child Welfare, and says that wherever possible, family matters are decided in accordance with the Tribe's laws and customs. In the few cases involving child support that have come to her attention, the State court has usually accepted her proposals.

The practice of organic law continues in part because the Narragansetts were not dispersed from their ancient birthplace. It has persisted because it represents the fundamental values and beliefs of the Narragansett people.

The Navajo Nation Child Support Enforcement Program

The Navajo Nation Council passed the Navajo Child Support Enforcement Act in December, 1994.

Prior to this historic passage, the Navajo Nation did not have a Child Support Enforcement Program. Navajo children living in the Navajo Nation did not enjoy the same benefits and protections provided by law to children off the Navajo Nation. The enforcement of support orders for Navajo children had been hampered by a lack of reciprocity between State and Tribal courts, between the courts of different Tribes, jurisdictional disputes, and service of process problems.



Many custodial parents had been unable to collect child support for their children due to the lack of specific Navajo Nation child support obligations, Navajo Nation enforcement statutes, and a lack of adequate resources for child support enforcement.

It was through the efforts of the Office of Navajo Women and Families, and the Navajo Women's Commission, that the Navajo Nation Child Support Enforcement (CSE) Program was established. Its charge was to work out cooperative agreements with States to provide child support enforcement services. This was accomplished initially through Joint Powers Agreements with the States of New Mexico and Arizona.

Through these agreements, the Navajo Nation developed working relationships, worked out jurisdictional barriers, ensured the provision of State-wide child support services to all Navajo citizens, and was able to focus on serving those living within the boundaries of the Navajo Nation.

The Navajo CSE Program established offices in Crownpoint and Shiprock, New Mexico, and Chinle, Arizona, all within the Navajo Nation boundaries.

The Navajo Nation CSE Program objectives were published as follows:

1. To comply with Federal Title IV-D guidelines to locate absent parents, to establish paternity when needed, to establish child support obligations, enforce or modify them, and to obtain and enforce medical support obligations; to issue and enforce liens, income withholding, bonds, and other security as appropriate; to collect spousal support when a support order is being enforced; to cooperate with other States in all child support functions; and to establish and monitor cases to recover amounts due States for TANF reimbursement and the custodial parent as necessary;
2. To provide presentations and educate the public at the Navajo community and division levels about the types of services provided by the Program, and the procedures involved in child support cases;
3. To provide technical services to clients related to child support;
4. To provide genetic testing at the Shiprock and Crownpoint Child Support Enforcement Offices;

5. To increase paternity establishment by 25%; and

6. To conduct hearings on contested child support cases at the Navajo Nation Office of Hearings and Appeals, where Hearing Officers issue the necessary orders.

The Navajo Nation CSE Program not only carries out Title IV-D of the Social Security Act, but also abides by Navajo Nation Code Title 9, Chapter 16, the Navajo Nation Child Support Enforcement Act and the Navajo Nation Child Support Guidelines approved by the Supreme Court of the Navajo Nation and adopted into law by the Navajo Nation Council Judiciary Committee.

The Guidelines are based on the Income Shares Model and the concept that a child should receive the same proportion of parental income that he or she would have received if the parents lived together. It is an objective basis for determining the average cost of child in households across a wide range of income. The Guidelines reflect the costs associated with the care and support of children within the Navajo Nation. The Guidelines are designed to:

1. Establish as Navajo Nation policy, an adequate standard of support for children, subject to the ability of parents to pay;

2. Make support payments equitable by ensuring consistent treatment of persons in similar circumstances.

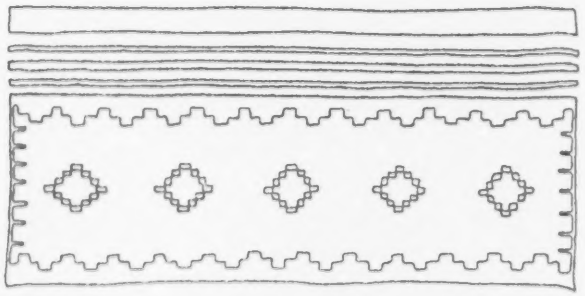
3. Improve the efficiency of the court process and the administrative hearings process by promoting settlements and providing guidance in establishing levels of child support to the Navajo Nation Courts, Office of Hearings and Appeals and the parties.

THE NAVAJO NATION'S RECORD TO DATE

Navajo Nation CSE Program	Caseload	Collections
1st year 1994-95	1,515*	$ 3,699
2nd year 1995-96	1,291*	126,603
3rd year 1996-97	729	297,635
4th year 1997-98	721	358,235**
Total Cases	4,256	
Total Collections	$785,762	
Total Projected to 12/98	$856,762	
Total Walk-In Cases Served to Date	1,770	

* 1st and 2nd year cases reflect transferred pending cases from Farmington Office that had jurisdictional issues. 50 to100 cases were transferred monthly until all were transferred. 3rd and 4th year figures are therefore not a declining caseload.

** This reflects collections to 4/98. An additional $71,000 is projected for May and June '98, the end of the Navajo Fiscal year.



American Indian and Alaska Native Tribal Governance

Tribal Sovereignty

Federally recognized American Indian Tribes and Alaska Native Village governments are domestic dependent sovereign nations in the United States, and retain all the rights of self-government not restricted by Federal treaty or statute.

Each Tribal government is unique, with its own infrastructure, laws, codes, procedures, customs and traditions. A Tribe's land status, enrollment rules and policies, type of governing body organization, enforcement codes, jurisdiction and court system, affect how it carries out Federal laws and State initiatives.

Tribal Governing Bodies

Most Tribes have Tribal Councils elected by their membership. Some are elected by reservation district or region. A few Tribal Councils are appointed by the Tribe's religious leaders. Some Tribes call their governing body "The Business Committee." Some reservations may have more than one Tribal Council as a governing body because more than one Tribe or Band shares the land. Some Tribal Council members are full-time paid employees of a Tribe; others are volunteers. Some are elected or appointed annually; others to longer terms. Negotiations for new intergovernmental agreements with States can be lengthy, as changes in political leadership and political cycles may occur during the process.

Jurisdiction on Indian Lands

Many factors can complicate a Tribe's legal jurisdiction and how laws are enforced. Reservation lands may have a checker board pattern of ownership. Jurisdiction can be established by Federal or Tribal law. It will vary according to the parties involved. Enforcement functions may vary depending on the size or structure of the Tribal judicial system. Officials may sometimes disagree over which circumstances dictate whether a State or the Tribe has concurrent or exclusive jurisdiction. Concurrent jurisdiction can be complicated because it bestows upon each government--Tribal and State--independent power over the same territory, persons, or subject matter. Public Law 280 grants varying degrees of concurrent civil and criminal jurisdictions on Tribal lands in certain states.

Enforcing Tribal and other laws can involve Tribal police, Bureau of Indian Affairs law enforcement officers, Federal Bureau of Investigation officers or cross-deputized State or county police officers. An individual may have to utilize a Federal, State or Tribal court, depending on the circumstances. When the parties are not both Tribal members, or are members of different Tribes, or are not residents of the reservation, different procedures may apply.

The Confederated Tribes of the Colville Reservation

The intergovernmental agreement between the Colville Tribes (Tribes) and the State of Washington Department of Social and Health Services (Department) was developed through the process described below. The resulting agreement can be cited as a model in terms of the process, the many legal, and traditions and customs considerations that are incorporated in it, and the codes developed and enacted by the Tribes.

The Colville Tribes and the State entered into the agreement to best define the most appropriate forum to deal with paternity establishment and child support enforcement in 1995. It illustrates a degree of cooperation and coordination that can be achieved between two governmental entities that agreed that it was in the best interests of the children to collaborate to provide child support enforcement services on the Colville reservation, but to operate under their own respective authorities and jurisdictional parameters.

Pursuant to their respective authorities, the agreement sections include full faith and credit by the Tribes; modification options by the Tribal Court (which may occur prospectively); charge-off of support arrearages; the Tribal position on Washington State's UIFSA (Uniform Interstate Family Support Act); the Department's limited restriction on collection; garnishment in Tribal Court; definition of a limited waiver of sovereign immunity; and limitation of Tribal liability. It also has sections on recognition and enforcement of Tribal Court Orders; modification in State Courts; recognition and allocation of authority to enter and enforce child support orders and paternity orders; Departmental deference to Tribal authority in actions commenced after the date of the agreement; as well as in representation, implementation, Tribal authority, and individual rights.

The agreement delineates the establishment of child support obligations in Tribal Court; the Guidelines established by the Tribes; and the procedures instituted by the Tribes to (1) establish support obligations; (2) prospectively modify support obligations; (3) establish paternity by order of a court of competent jurisdiction or by administrative process; and (4) establish a process for immediate wage withholding. Subsections delineate the procedures for the Department to seek establishment of child support orders where (1) public assistance benefits are being paid or have been paid to one of the parties to the action in Tribal Court; (2) the custodial parent applies for child support services from the Department; (3) the Department receives an interstate referral for child support services.

The agreement stipulates that Tribal custom or tradition may be raised as an affirmative defense in any Colville Tribal Court proceeding brought under or in furtherance of the agreement. Other sections spell

out the conditions of case referral back to the Department; establishment of paternity in Tribal Court, and the time and procedure requirements for this, as well as under which conditions the Tribe will be reimbursed by the Department. The Department's responsibilities are (1) information sharing and providing technical assistance to the Colville Tribes; (2) use of the Parent Locator Service to locate the parent before a case is referred to the Tribe, (3) the applicability to both parties of Tribal, state and federal laws relating to privacy and confidentiality; and (4) the conditions of case referral applying to the Department in referring cases to the Tribes.

Cost reimbursement to the Tribes is made according to an approved cost allocation plan for only IV-D cases, and includes prosecutor's costs and other allowable costs. The cost allocation plan was developed jointly and approved by the Department prior to reimbursement of costs to the Tribes. Under the responsibilities of the Tribes section, they are to enact a child support enforcement code including procedures before reimbursement is made; to provide an annual budget of costs and expenditures for which reimbursement is claimed by the Tribes; submit monthly claims for reimbursement; report on the disposition of cases; to respond to reasonable requests for information; to refer or transfer cases to the Department when appropriate; to comply with federal statutes and regulations; and to retain records for five years as required by federal regulations and allow for inspection, review, or audit by the Department or Federal auditors.

Dispute resolution of conflicts, clarifications and concerns over the appropriateness of a referral are covered, with the stipulation that either party can request mediation, or a review board if a conflict or dispute cannot be resolved by a mediator. Notice procedures are detailed in terms of compliance with appropriate notice requirements, and in the case of AFDC (TANF), notice of the Tribal Court proceedings which establish an obligation is served on the local Department. The Agreement concludes with the sections on duration and review of agreement, which calls for the parties to periodically discuss any concerns they may have with the operation of the program. Changes and modifications may be made from time to time. Mediation is required prior to termination of the Agreement. The Agreement includes definitions of many of the terms in it.

The diminishment of sovereignty was a concern of the Tribes, but this and other concerns were worked out by recognizing in writing the sovereignty of the Tribe and the State of Washington, and each one's respective sovereign interests. The parties recognized that the preferred method for the handling of cases where all or some of the parties are enrolled Tribal members living on the Reservation, was to enter into an agreement so that appropriate cases could be referred to the Tribe to be processed in the Colville Tribal Court.

The agreement is a recognition that the ability of the Tribe and the State to enforce child support obligations, orders, and judgments would be

enhanced with the establishment of procedures for the exchange of services, and for the reciprocal recognition and enforcement of child support orders and judgments. The parties also recognized and accepted, that more appropriate child support determinations related to children enrolled in the Tribe would result when the Department coordinated with the Tribes, and referred appropriate classes of cases to the Tribes, to be handled in the Colville Tribal Court where it could apply its own support and collection standards and laws.

Both parties recognized that the setting of Child Support Guidelines and Collection Standards by the Colville Tribes is a proper exercise of its Tribal sovereignty. It was further stated that the establishment of the procedures is in the best interests of the Indian families, especially Indian children who have a right and a need to receive required support.

The parties noted that the agreement is consistent with, and is intended to further, declared national policy of protecting the best interests of children by providing a more effective and efficient way by which these children may be maintained from the resources of responsible parents, and thereby relieving, at least in part, the burden presently borne by the general citizenry.

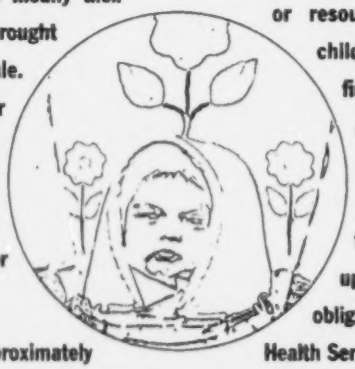
The Colville Tribes went through a long and studied process to enter into the agreement with the State. A number of issues were deliberated initially with regard to 28 USC Section 1738(b) full faith and credit; the authorities to be delegated by the State; State fee schedules, State Guidelines and Worksheets that did not reflect Tribal custom and tradition, and thereby limited the Tribes' exercise of Tribal sovereignty, jurisdiction and self-governance; and charge-off authority.

The Tribes established an Executive Committee on Child Support in order to gather together the Council persons in charge of various subject areas and departments in the Tribal government. It was realized that child support had a wide impact on the reservation. For instance, the Executive Committee on Child Support was composed of all the Chairs of the Committees of the Colville Tribal governmental structure. The Colville Tribes have a 14 member Tribal Council, with each Council person designated as the Chair of nine different committees ranging from Human Resources, Community Development, to Economic Development, etc. The Chairs of each Tribal committee serve on the Child Support Executive Committee.

The Executive Committee approach provided efficiency in discussions with the Tribal Council, since initially, attorneys and others had encountered the problem of going from committee to committee and repeating the same information over and over. The approach resulted in the members becoming knowledgeable about Tribal-wide child support enforcement issues and goals, and making better and informed decisions.

The Colville Tribes' approach also included monthly implementation meetings with State of Washington

and Tribal representatives to brainstorm the various issues that arise and need to be addressed, such as the Colville Confederated Tribes Child Support Schedule that was adopted by resolution on January 27, 1998. The Tribal Schedule more accurately reflects the median income levels on the reservation which are lower than state income levels. Parties in prior child support cases that were established through the Tribal Court using the Washington State Schedule, now have the right to modify their obligations to reflect the changes brought about by the Colville Schedule. Eligible parties can also have their Washington State child support order registered with the Tribal Court, and have the right to modify their child support obligations per the Colville Schedule.



The Colville Fee Schedule is approximately 34% less than the State fee schedule. The Tribal Planning Department used census figures, county economic data, income data and other factors to arrive at the percentage. The Colville Fee Schedule was incorporated into a table used with the Colville Guidelines.

The Tribes could not adopt the Washington State Child Support Guidelines or Worksheets because they did not reflect Tribal custom and tradition. Under the Colville Schedule, child support obligations are set using the combined monthly net income of both parents. A set of standards that more accurately reflect the Tribes' and parents' customs and traditions was developed and incorporated within the Guidelines. The Court can deviate from the directive when it is not in the best interests of the child(ren.)

Taken into consideration in an Allocation of Support Obligation are work-related day care expenses, extraordinary health care expenses, the residential schedule of the child(ren), possession of wealth, traditional or custom, or culture services, other resources. The Court may deviate from the basic support obligation if one or both parents before the Court provide traditional custom or culture services or resources to the support of the child(ren)--such as fish, game, firewood, clothing or other basic needs, and health care needs. Credit can be given to the paying parent by making an adjustment for the costs of medical insurance up to 5% of the basic support obligation, the availability of Indian Health Service care and other means, as an appropriate method to fulfill health care duties.

Other standards are used to determine the support obligation by the Tribal Court. Relevant to the case are the age(s) of the child(ren); the number of children in the family; children from other relationships; seasonal or nonrecurring income; traditional or custom or cultural services or resources; in-kind services; resources from extended family or community members; disability payments; and other non-recurring income. There are also standards for child support modification for changes in circumstance or when necessary to serve the best interests of the child(ren).

Washington State delegated the authority to the Colville Tribes to charge-off large, unrealistically

collectible child support based on a variety of factors, but it applies only to any child support debt due the State or Tribes from a responsible parent if it is found that there are no cost-effective means of collecting the debt under the statute. It was very important to have the authority and responsibility of charging-off the large debts based on imputed income (the average net income set by the U.S. Census Bureau) because Tribal members' income on the reservation does not correlate to the State of Washington income. The Colville Tribes Charge-Off Statute was reviewed by the Attorney General of Washington State.

Tribal Laws, Courts, Codes

Many Tribes specifically reserved by treaty, the responsibility for enacting their own laws and enforcing them. Domestic relations issues between Native Americans were handled through Tribal traditions until the turn of the century. Initially these matters were resolved by Tribal Councils, but now are more often handled by Tribal Court systems. Court system infrastructures vary among the Tribes.

About two dozen Tribes operate courts established by federal regulation. These are called Courts of Indian Offenses or CFR Courts. Some Tribes have traditional courts that meet on an as-needed basis, conduct their business in the Tribal language, and bring in all the parties to the dispute rather than allowing an adversarial presentation.

Approximately 250 Tribes have established their own codes of judicial conduct. Some Tribal Courts have an appellate division in the Tribe or within their region. Many have enacted a Children's Code, and some are updating their code(s) to include changes in Federal child support enforcement laws. Intergovernmental agreements with States may include child support enforcement matters in which court authority is ambiguous.

Land Status

A Tribe's land status can be significant to the Tribe's desire and ability to enter into an intergovernmental agreement. Not all American Indian Tribes are land based. On some reservations, Tribal governments manage their land. Most Tribes' land is in trust status by the Federal government. On some reservations, more non-Indian residents than Tribal members may live there due to past Federal policies of opening reservation land ownership to non-Indians.

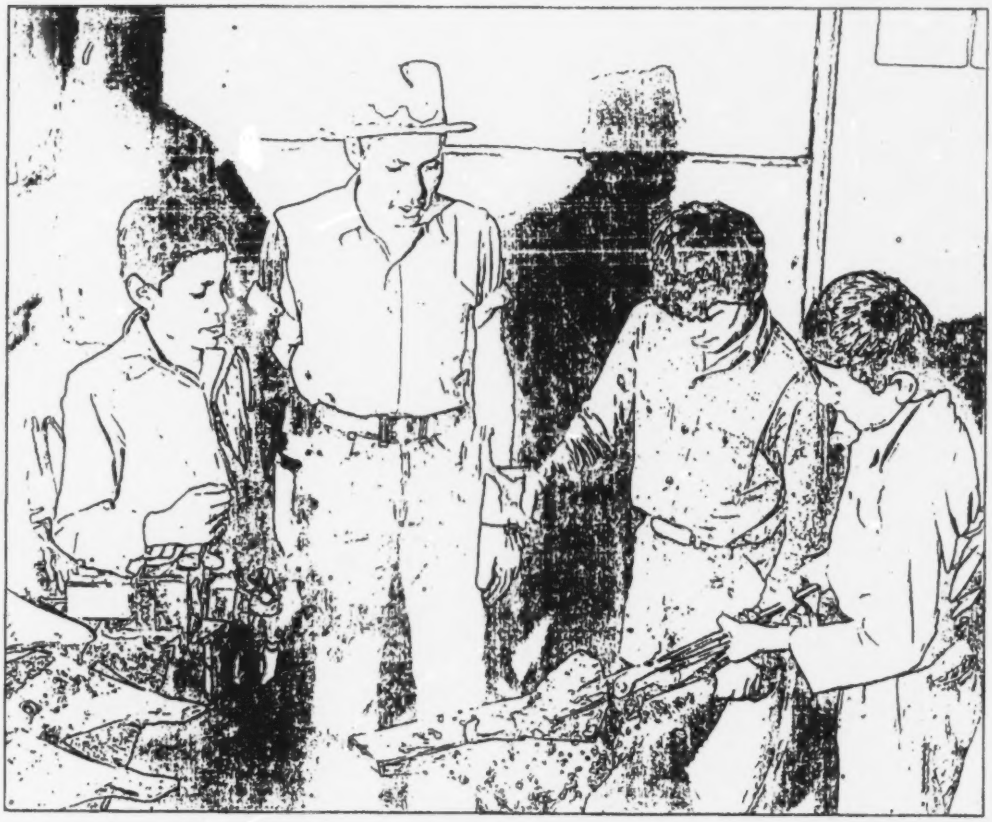
Many Tribes administer some governmental services for large populations of Tribal members living beyond reservation boundaries in "border towns."

Tribal Membership

The criteria for Tribal membership are usually established by the Tribal government, although Federal statutes mandate enrollment requirements for a few Tribes. Enrollment is usually based on either descendency or blood quantum. The number of members can range from a few dozen to over 200,000. Unlike State residency laws, Tribal membership is usually not contingent on residency, and membership status does not change once established.

The Service Population

Residency in Indian Country does not, however, give an individual the right to participate in the local Tribal government. Life-long reservation residents who are not enrolled in the Tribe cannot vote in local elections nor hold office. Negotiations for services and the service area determine whether a Tribe will serve its entire membership, its resident membership, with or without border town residents, or all reservations residents.



Labor Force Data

The Department of Interior, Bureau of Indian Affairs (BIA) most recently published 1995 Indian Service Population report shows that the total labor force was comprised of 483,133 individuals in 1995.

Of this total, 35 percent were employed in 1995, compared to 37 percent in 1993.

In 1995, only 29 percent of persons employed, between the ages of 16 and 64, earned $9,048 or more. In 1993, only 27 percent of persons aged 16 through 64 earned $7,000 or more./1

/1 Indian Service Population and Labor Force Estimates, U. S. Department of the Interior, Bureau of Indian Affairs, 1995.

APPENDIX

A Summary of the Legislative History of Child Support Enforcement

Enacted in 1975, the Title IV-D of the Social Security Act established a Child Support Enforcement Program and the basic responsibilities for administering the program by States. It requires the States to publicize frequently, through public service announcements and other means, the availability of child support services together with information about the application fee for non-AFDC (Aid to Families with Dependent Children) applicants, and a telephone number, or address, to get more information about services. /1

Designed as a joint Federal, State, and local partnership, the program involves 54 separate State systems, each with its own unique laws and procedures. The program is usually operated by State and local human services agencies, often with the help of prosecuting attorneys and other law enforcement officials, as well as officials of the Family or Domestic Relations Courts. In some States, the program is operated under the State Attorney General's Office.

Initially the program's purpose was to recover AFDC expenditures, later extended to include nonassistance families, as an alternative to public assistance. The assignment of rights to child support to the State is a condition to receiving AFDC (now Temporary Assistance to Needy Families, TANF).

The basic IV-D program remains the way of doing business today--locating the noncustodial parent, establishing paternity, establishing and enforcing support orders. The IV-D mandate gives the States discretion on how to organize the program. The Federal/State partnership is well established, more recently through the development of the joint goals of the OCSE Strategic Plan.

Federal funding for the program is 66% for the allowable and allocable and necessary expenses to administer the program. The 66% funding is open-ended as this is a Federal entitlement program. State match sources vary.

1/ Committee on Ways and Means U.S. House of Representatives, Overview of Entitlement Programs, Green Book

APPENDIX

A Summary of the Legislative History of Child Support Enforcement

Incentive payments to the States are another funding stream for the States. Incentive funds were first awarded to encourage resolving interstate cases. The incentive funding focus today is on collections of child support on behalf of the parents receiving TANF and for non-TANF collections.

The 1975 amendments included State plan requirements and designation of a single and separate State child support enforcement agency.

The 1981 amendments authorized paying States 90% of their costs to develop and improve their management information systems to track and monitor cases, including paying for expenditures for hardware (i.e. computers). Incentive payments are assigned to States as a condition of receipt of TANF assistance.

Through a formula method, States and localities also receive Federal CSE incentive payments that come entirely from the Federal share of child support collections. This incentive formula was designed to encourage States to develop CSE programs that encourage collections on behalf of both TANF and non-TANF families, and to improve the program's cost effectiveness.

Under an incentive formula, States have received incentive payments equal to 6% to 10% based on annual TANF collections and for non-TANF collections. Incentive payments, although capped, have been open ended. In interstate cases, both States have been credited with the collection. This has encouraged interstate cooperation.

Of the several primary funding streams for the child support program, only the 66% percent Federal share for administrative costs is required to be spent for child support enforcement by a State. Up to now, incentive funding capped at 10% of collections, has been used for anything a State wants, as have collection funds. The 90% monitoring and tracking automation funding has been reduced to 80% in PRWORA and is capped. Another major funding stream is the non-federal share of TANF/AFDC collections.

APPENDIX

A Summary of the Legislative History of Child Support Enforcement

Judges and other officials are required to use State-developed guidelines for child support payments unless they are rebutted by a written finding that applying the guidelines would be unjust or inappropriate in a particular case. There are time limits within which States must accept and respond to requests for assistance in establishing and enforcing child support orders, as well as time limits within which child support payments collected by the IV-D agency must be distributed to the families to whom they are owed.

The Federal income tax refund offset began in 1981.

The 1984 child support enforcement amendments emphasized equal services to the non-public assistance population. They included mandatory procedures:

1) wage withholding for cases with an arrearage of one month,
2) expedited processes for order establishment,
3) State income tax refund offset,
4) liens imposed against real and personal property,
5) bonds, securities and other guarantees as a means for securing payment of overdue support, and
6) reporting delinquent parents to the credit bureaus upon request.

The primary funding stream (initially 75%, later 70%) was revised in 1984 and the Federal participation rate was fixed at 66%. The amendments authorized 90% funding for laboratory testing for paternity establishment. They required that State law allow for the bringing of paternity actions any time prior to a child's 18th birthday. All child support orders issued or modified by a State were required to include a provision for wage withholding. The 1984 amendments required that enforcement techniques be applied to interstate as well as intra-state cases.

APPENDIX

A Summary of the Legislative History of Child Support Enforcement

Audit requirements changed from annual audits for IV-D agencies to once every three years, with graduated penalties of from one-to-five percent of total payments to the States under the former AFDC program (now TANF) if Federal requirements were not substantially complied with over successive periods, and included when penalties might be suspended.

Other 1984 provisions required States to:

1) collect support in certain foster care cases;
2) collect spousal support in addition to child support where both are due;
3) notify AFDC recipients at least yearly of collections made for them;
4) establish a State commission to study operation of the IV-D system;
5) formulate guidelines to determine appropriate child support obligation amounts;
6) offset the costs of the program by charging various fees to non-welfare families and to delinquent absent parents;
7) allow families no longer on AFDC as a result of payment of child support, to remain eligible for Medicaid for four months; and
8) seek to establish medical support awards.

The 1986 Bradley Amendment required States to provide that support installments are vested when they fall due and are therefore judgments entitled to full faith and credit, preventing the retroactive modification of child support orders.

The Family Support Act of 1988 required States to provide for immediate wage withholding for all IV-D orders issued or modified after November 1990, unless there is good cause determination or a written agreement between both parties. It also extended immediate wage-holding to all orders, including non-IV-D ones, initially issued on or after January 1994.

APPENDIX

A Summary of the Legislative History of Child Support Enforcement

After 1989 court and other officials were required to use State guidelines for support awards unless they are rebutted by a written finding that applying the guidelines would be unjust or inappropriate in the case. States must review their guidelines every four years.

The States were required to have a plan by October 1990, to review and adjust support orders to comply with State guidelines. By October 1993, for AFDC cases, States had to review and adjust orders at least once every three years, unless it was not in the best interest of the child or neither parent requested a review. In non-AFDC cases, review is required at least once every three years if requested by either parent.

This Act authorized the Federal Parent Locator Service with access to wage and unemployment data from State employment security agencies. It required States to meet performance standards for case processing outlined in the Federal regulations by October 1990.

States were required to have procedures for ordering all parties in a contested paternity case to take a genetic test upon request of any party. Encouraged States to adopt a simple civil process for voluntary acknowledgment of paternity and a civil procedure for establishing paternity in contested cases.

They were required to meet Federal standards to establish paternity in fiscal year 1992. A State's paternity establishments percentage must 1) be at least 50%; 2) be at least equal to the average for all States; or 3) have increased by three percentage points each fiscal year.

Automated tracking and monitoring systems were to be implemented by October 1, 1995. The child support disregard was to be applied to a payment made in the month due even if received in a subsequent month.

APPENDIX

A Summary of the Legislative History of Child Support Enforcement

By January 3, 1993, States were to inform AFDC families of the amount of support collected on their behalf monthly, rather than annually.

The Statute of Limitations was clarified requiring that paternity be established for anyone under age 18 in 1984 regardless of whether there was a dismissal due to statutes of limitations--which meant reopening closed cases.

State child support agencies were required to petition to include medical support as part of any child support order whenever health care coverage is available to the non-custodial parent at a reasonable cost. States were to enforce medical support ordered by a court or administrative process under State law. Providing for health care needs of child is an integral part of the obligation that parents have.

PICTURE CREDITS

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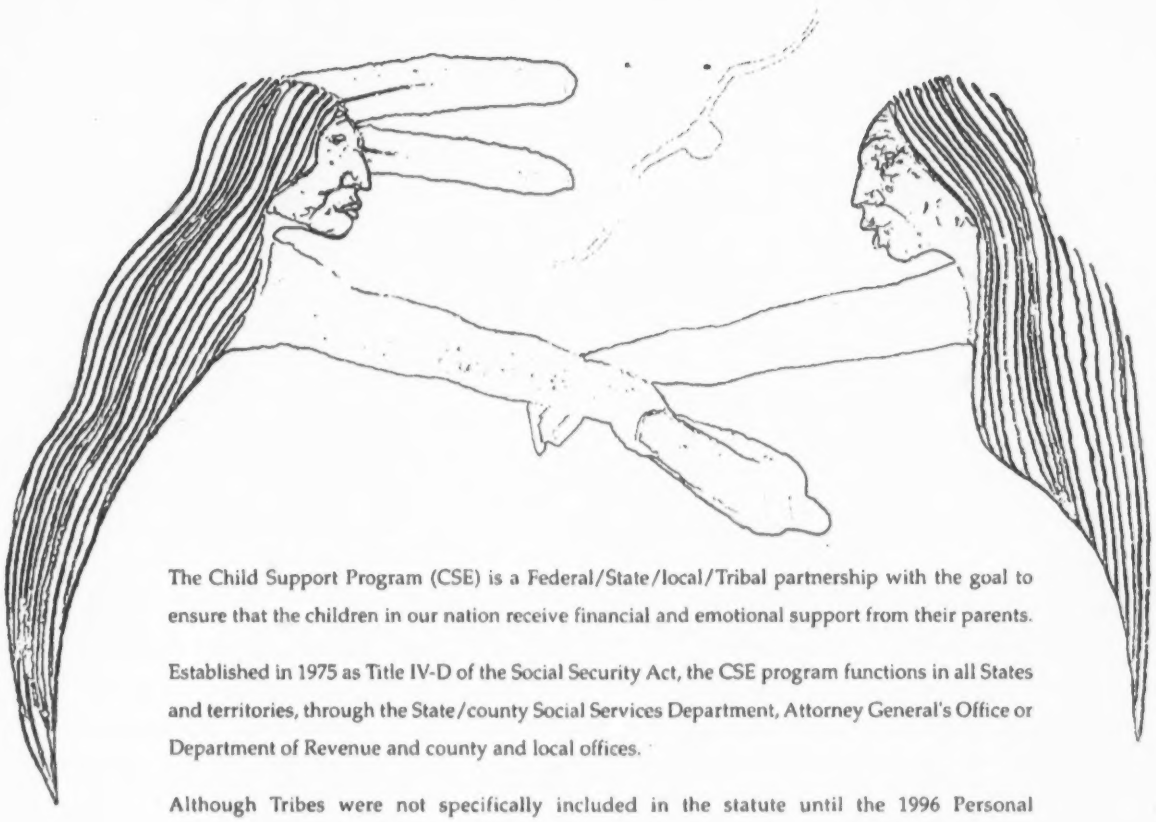
Back cover - Office of Child Support Enforcement



The Child Support Program (CSE) is a Federal/State/local/Tribal partnership with the goal to ensure that the children in our nation receive financial and emotional support from their parents.

Established in 1975 as Title IV-D of the Social Security Act, the CSE program functions in all States and territories, through the State/county Social Services Department, Attorney General's Office or Department of Revenue and county and local offices.

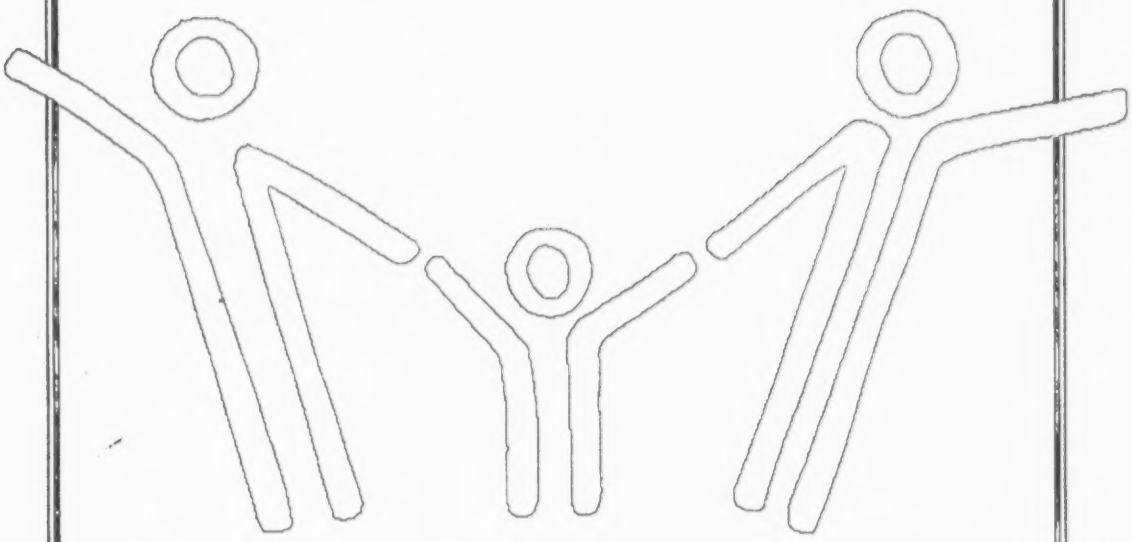
Although Tribes were not specifically included in the statute until the 1996 Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), several Tribes have negotiated agreements–informal, cooperative, intergovernmental, and joint powers--with some states in a mutual effort to serve Native American children. Each agreement is unique to the Tribe ranging from the comprehensive Joint Powers Agreement negotiated by the Navajo Nation and the states of New Mexico and Arizona, to an informal process adopted by the Colorado River Indian Tribes and Arizona.

New provisions in the 1996 Personal Responsibility and Work Opportunity Reconciliation Act amendments authorize direct child support enforcement funding to Tribes, or Tribal organizations "that demonstrate the capacity to operate a CSE program that meets the objectives of Title IV". The amendments also provide that States may enter into cooperative agreements with an Indian Tribe, Tribal organization, or Alaska Native Village, group, regional or village corporation that meets certain criteria.

The Federal Office of Child Support Enforcement is part of the U.S. Department of Health and Human Services. The new Native American Program will assist Tribes and Tribal organizations to develop and operate Tribal child support programs under the new Federal law provisions. It will inform Tribes and Native American organizations about the new cooperative agreement provisions for States and Tribes, Tribal organizations, and Tribal Court systems. The new amendment provisions do not void any existing agreements under Section 401 (25 U.S.C. 1322).

The Federal Office of Child Support Enforcement provides the major share of program operating costs, provides policy guidance and technical help, conducts audits, supports research, and shares ideas for program improvement.

GIVING HOPE AND SUPPORT
TO
AMERICA'S CHILDREN



STRENGTHENING THE CIRCLE